THE

Soveraigns Prerogative

AND THE

Subjects Priviledge.

COMPRISED

In several *Speeches*, *Cases*, and *Arguments*

OF

LAW

Discussed between the Late

KING CHARLS,

And the most Eminent Persons of both Houses of

PARLIAMENT.

Together with the Grand Mysteries of State then in Agitation.

Lege Historias, ne fias Historia.

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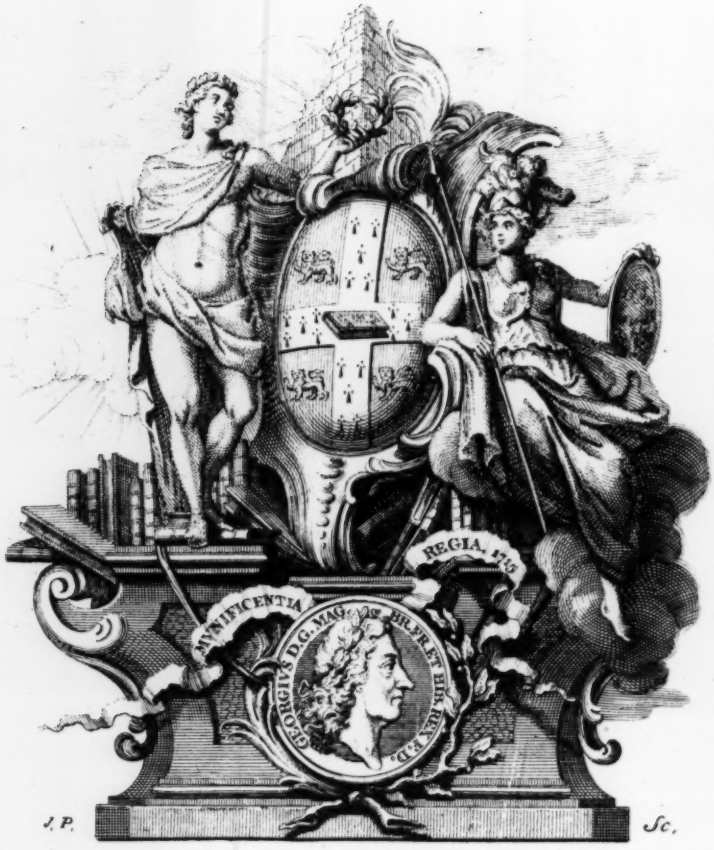
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THE

PREFACE.

ONe of the moſt lawfull wayes whereby man in ſome ſort may be ſaid *to revenge himſelf of the ſhortneſſe of his life*, and extend the meaſure thereof to a larger proportion then nature allows him, is by the *ſtudie of Hiſtorie*. For *Hiſtorie is the remembrancer of the time paſt*, it is the *monument generall* erected over actions long ſince dead and interred, acquainting ſuch as read the Epitaph thereon with the moſt remarkable paſſages of the ages paſt: ſo that a *Dwarf* by the advantage of the aſcent of Hiſtory, may ſuddenly ſtart up (if not a *Giant*) one of *competent ſtature* to overſee all tranſactions long before him.

But of all *Hiſtories* none more pleaſant or profitable then thoſe of our *Native Countrey*, which, as it is an *Iſland*, and ſo a little entire world in it ſelf, hath in all ages afforded as many *ſignall obſervables* as any content of ground of the ſame proportion, neither *Greece* nor *Italie* it ſelf excepted, which indeed overmatch us not in *Hiſtories*, but *Hiſtorians*. Otherwiſe if *workmen* might be had, as fair an *Edifice*

might be erected of *Engliſh affaires*, ſuch the plenty, variety, and curioſity of materials concurring thereunto.

And truly I cannot but accuſe the blame-worthy negligence of many able men, who under the pretended plea of modeſty, and humble diſtruſt of their own ſufficiency, preferre rather to moulder away in obſcuritie, then induſtriouſly to preſerve both their own memory and the honour of their nation. And thoſe alſo ſeem to me equally worthy of reproof, who *ſharp-ſighted* abroad, are little better then *blinded* at home; know the way from *Paris* to *Lions* better then from *London* to *York*; can give a better account from *Pharamond* to the laſt *French Lewis*, then from our *Lucius* to *King Charles*. A very prepoſterous knowledge, ſeeing *Hiſtorie* (like unto good mens charitie) is though not to end, yet to begin at home, and thence to make its methodicall progreſſe into *Forreign parts*.

Now of all *Engliſh Hiſtorie*, the greateſt ſhame is to be ignorant in the *Accidents* of *our own Age* of neareſt concernment unto our ſelves. Thoſe *ſtarres* which are *loweſt* ſeem *lighteſt* unto us; yea a *candle* at hand illuminates more then a *torch* at diſtance. A man is moſt (as I may ſay) *morally edified* by reading ſuch men and matters as are his own *contemporaries*. Chiefly, becauſe therein not ſo ſubject to be deceived by partiallity of reports, becauſe not taking up ſo much upon truſt, as conducted to his belief by his own eyes and eares *witneſſes* of all *tranſactions*.

The

The conſideration of the *premiſes* hath principally moved me to the ſetting forth of this *work*: wherein I confeſſe rather *fidelitie* then *induſtry*, yet rather *induſtrie* then any *wit* or *learning* hath been required. Some works reſent too much of their *Authour*, frequently infuſing his own *judgement* and *affections* clean through the contexture of his *writings*, to the great prejudicing of the *truth* and miſguiding of his *Reader*. And this is likely to be the *Epidemicall diſeaſe* of the books in our *Age*, wherein all are ſo engaged in parties, that their *writings* will rather appear *pleadings* then *reports*. VVhat by *generall errour* is falſely told of the *Jews*, that they are alwayes *crook-backed*, will be found moſt true of *Authours* of this age, that they are *crook-ſided*, *warped* and *bowed* to the *right* or to the *left*; ſo hard it will be to find a *ſtreight*, *upright*, and *unbiaſſed Hiſtorian*.

For mine own part, I can profeſſe *integrity* herein, the only thing I can aſſume to my ſelf in this work. And indeed I have had no occaſion nor opportunitie to expreſſe my own *inclinations*, who have no *commiſsion* to be an *Authour*, but a *Tranſcriber*.

There is an *Officer* in the *Exchequer*, who though ſitting with the *Barons* on the *Bench*, hath no power to vote with them, nor interpoſeth his *judgement* as *deciſive* in any *cauſe*, but obſerving ſilence in pleading, ſpeaketh ſometimes as to the regulation of the time how it paſſeth away. Such and no other my employment in this *Book*, being a *true tell-time* (and no more) to *marſhall* the *ſpeeches* in *due order*, and to

acquaint the *Reader* with the *day* of the *moneth* when they were ſpoken; which done, my task is performed.

The Book containeth the *tranſactions* of the *Parliament tertio & quarto Caroli.* A diſtance of time of fit proportion for the *Preſſe*, not too late nor too ſoon: not ſo farre off as that the footſteps of truth are worn out, as in ſome ancient ſtories, where the moſt cunning Hunters are at a loſſe; nor yet ſo near that the heels of truth ought to be feared; though he hath but a ſervile ſoul who overvalueth his own ſafety in ſuch caſes to the poyſoning of poſterity with a falſhood.

Here may one behold the ſeverall *traverſes* of *State* betwixt the *upholders* of the *Royall Prerogative* & the *Aſſerters* of the *Subjects Liberties*. The former endeavoured to ſupport (and perchance to enlarge) the *Kings Prerogative*, how in ſome caſes it is too high to come under the roof of the *Law*; and the diſcretion of the *Sceptre* as *Guardian* for the generall good of the *Commonwealth*, muſt be intruſted on ſome emergencies with the managing of its own might. And ſeeing *Crownes* commonly keep what they once catch, loath to abate a whit of that power inveſted in them, at leaſtwiſe exerciſed by them; no wonder if the *Courtiers* ſtickled for their *Maſter* his right, and as the appurtenances, were zealous for that Power and Honour on whom they depended.

On the other ſide the *Aſſerters* of the *Subjects Liberties*, *Truſtees* for the *Countreys good*, engage earneſtly

neſtly to retrench the *Prerogative* within the known limits of Law, that ſo *Subjects* may be at a certainty how to ſquare their *loyalty* and *obedience*. For *Allegiance* is willingly and cheerfully paid, where there is a *ſure* and *ſtanding Rule* whereto *Sovereigns* commands and *Subjects* duty is to be conformed. Otherwiſe their loyalty flatteth and deadeth by degrees, when expoſed to an unbounded *Arbitrary power*, ſo that they never know an end of their own obeying, but are in daily fear of new preſſures from a lawleſſe power, whoſe pleaſure is all the reaſon of impoſing them. Beſides, *unlimited power* in a *Prince* carrieth in it ſelf a ſtrong temptation to *Tyranny*, and *mortall man* his *corruption* is ſcarce to be truſted with ſo *great a command* for fear of abuſing thereof.

Now although in this *Parliament* theſe two *Parties* are plainly to be diſcovered, yet the judicious reader will obſerve that there was as yet leſſe eagerneſs & more moderation in either party, matters not being then heightened with ſuch mutuall animoſities as ſince we have beheld. Yea it ſeems that the ſins of our *Nation* began even then to cry ſo loud, that the two *Parties* in *Parliament* could not diſtinctly hear each other ſo as effectually to underſtand one another, diſturbed by the *clamorous* and *obſtreperous noiſe* of *Engliſh wickedneſſe*, which began to cry aloud for vengeance on a *wanton nation*, even to the abrupt breaking off of the Parliament.

VVe have had no other deſign in the *edition* here-

hereof then the generall good, hoping that *Readers* of all ſorts may gain benefit thereby. Yea ſuch *young folk* whoſe ſhort capacities as yet are unable to reach the policie and *State part* in theſe pieces, may better themſelves by the very *language* and *expreſſions* therein. Here may they obſerve the variety of eloquence in ſeverall perſons, ſome large, copious and exuberant; yet not flaſhy, empty and dilute: ſome conciſe, piccant and ſententious; yet not involved, dark and obſcure: ſome participating of both, which in my apprehenſion is the beſt kind of Orations.

However, let not any think that all the *Gentlemen* of *able parts* aſſembled in the *Parliament* are regiſtred in this *book* by their particular ſervice to their *Countrey*, ſeeing only ſuch are entred herein, who *made ſet, ſtudied*, and *premeditated Orations*. Many *Worthies* there were in that place who only were dexterous at ſhort and quick returnes, and which retrieved long debates with ſome ſhort and compendious anſwer very effectuall to the purpoſe. For ſometimes a *Stilletto blow* may give a more deep and deadly wound then the point and edge of the ſharpeſt Sword, which requireth more time and room for the managing thereof. Yea many a diſcreet gentleman, who, after long traverſing of matters, judiciouſly beſtowed his *Yea* or *Nay* in the right ſcale thereof to weigh the balance down when in Æquilibrio of matters of high importance (though otherwiſe not haranguing it in large diſcourſes) might

might return to his countrey with ſatisfaction to his conſcience that he had well deſerved thereof.

VVe are confident alſo that the *Students* of the *Law* may advantage themſelves by ſeverall *Caſes* here largely reported. And here all care hath been uſed in comparing *Records* herein cited with the Originalls; though we dare not avouch it clear from all miſtakes, the greateſt induſtry and exactneſſe being ſubject to fallibilitie herein. VVe have ſeen the *Reports* of late *Judges* in *print*, and could point at *Erratas* therein: which we ſpeak not to accuſe them, but excuſe our ſelves if ſome faults be found in our quotations.

As for the Gentlemen whoſe ſpeeches are herein related, they are either dead or ſtill ſurviving. For the former we hope we have no cauſe to ask pardon of their memories, and fear not their ghoſts diſquieting us for offering any injury unto them, or that we ſhall fall into the diſfavour of their Heires for miſrepreſenting any thing for their fathers diſadvantage.

As for ſuch who are ſtill alive, we appeal unto them, making them the Judges of our integrity herein. True it is that the dragge-net of no diligence can be of that capacity, nor can it be ſo advantagiouſly caſt, as to catch and hold all particulars uttered in a long ſpeech; *Minums* will get through the holes thereof: and there be thoſe *minutiæ* in a ſpeech which will eſcape the attention of the quickeſt eare, and tranſcription of the ſpeedieſt hand. But

ſuch things are loſt without any loſſe as to the *eſſentials* of the matter: and here all things of concernment are faithfully repreſented.

And may the *Reader* be pleaſed to take notice that this *Book* is no *Monochord*, or *Inſtrument* of a *ſingle ſtring*, no nor is it a *ſingle Inſtrument*; but the exact reſult of many collections. We have compared *varias lectiones*, or rather *varias auditiones*, the copies as they have been taken by ſeverall *Auditours*. Sometimes one *copie* charitably relieved another, nor was it long before the defects of the ſame *copie* were ſupplied out of that other *tranſcription*. Thus neither is there being for *Books*, nor *living* for *men* in this world, without being mutually beholding one to another; & he who lends to day, may be glad to borrow to morrow.

One thing let me mind the *Reader*, that it may move him to a *publick* and *communicative Spirit*, not *enviouſly* to engroſſe to himſelf what may do good to others. Some *Gentlemen*, *Speakers* in this *Parliament*, imparted their *Speeches* to their *intimate Friends*; the tranſcripts whereof were multiplied amongſt others (the penne being very procreative of iſſue in this nature:) and ſince it hath happened that the *Gentlemens Originalls* have in theſe *troubleſome* times miſcarried, yet ſo that the *fountain* (as I may ſay) being dried up, hath fetch't this water from the *channell*, & they have again ſupplied their loſſes from thoſe to whom they civilly communicated a *copy* of their paines. Thus none are looſers *in fine*, by making others ſharers in their endeavours.

And

And now give me leave to ſay, that the *Hiſtory* of the *Parliament* repreſented in this *Book* is *fundamentall* to the *Hiſtory* of our *Times*, and what valiant penne ſoever dare undertake the writing thereof, it muſt lay its *ground-work*, and take its *riſe* from this *Parliament*. Herein were vertually contained the ſeeds of all thoſe *troubles* which ſince the heat of *anger* hath ripened to the full *height* and *breadth* thereof. For what is ſaid of *Rebeckah*, that *Twinnes were in her bowels*, which made their *Mothers wombe* the *field of their fight*, wherein their *unborn Infancy* gave an *Eſſay* of that *Antipathy* which would be continued betwixt them when arrived at riper yeares: the ſame was true here, where the oppoſition betwixt two parties was begun with much violence and impetuouſneſſe.

Yet let not the *ſimilitude* be uncharitably improved beyond my intent, as fixing the *odious character* of *Eſau* on either of them, who hope and believe that both of them might be *Jacobs*, at the firſt propounding plain, pious, and peaceable ends unto themſelves. Yea this may ſay to *enſuing Parliaments*, as *Æneas* in the *Poet* to his ſonne,

Diſce puer virtutem ex me verumque laborem,
Fortunam ex aliis———————

Nor can any true *Patriot* ever deſire that men more honourable, more knowing, and able in all faculties of policie, law, and generall learning,

I may adde alſo more loving to, or beloved of their Countreys, ever ſhould meet in *Parliament*; who hence may take their pattern of many worthy and excellent vertues in Statiſts. But oh, let them farre exceed this in happineſſe; the abrupt end whereof was the beginning of all our miſeries.

T. F.

A TA-

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Pag. 10. lin. 18. for *euge, ingredi*, read yet *coge ingredi.*

The

The KINGS Speech 17. March 1627.

My Lords *and* Gentlemen,

THeſe Times are for action, wherefore for examples ſake I meane not to ſpend much time in words, expecting accordingly that your (as I hope) good reſolutions will be ſpeedy, not ſpending time unneceſſarily, or (that I may better ſay) dangerouſly; for tedious Conſultations at this conjuncture of time are as hurtfull as ill Reſolutions.

I am ſure you now expect from me both to know the cauſe of your meeting, and what to reſolve on: yet I think there is none here but knowes that common Danger is the cauſe of this Parliament, *and that Supply at this time is the chief end of it; ſo that I need but point to you what to do. I will uſe but few perſwaſions; for if to maintaine your owne adviſes, and as now the caſe ſtands, by the following thereof the true Religion, Lawes and Liberties of this State, and the juſt defence of our true Friends and Allies, be not ſufficient, then no eloquence of Men or Angels will prevaile.*

Only let me remember you that my duty moſt of all, and every one of yours according to his degree is, to ſeek the maintenance of this Church and Common-wealth: and certainly there never was a time in which this duty was more neceſſarily required then now.

I therefore judging of a Parliament *to be the antient, ſpeedieſt & beſt way in this time of common Dan-*

 ger,

ger, to give ſuch ſupply as to ſecure our ſelves, and to ſave our Friends from imminent ruine, have called you together. Every man muſt do according to his conſcience. Wherefore if you (which God forbid) ſhould not doe your duties in contributing what the State at this time needs, I muſt in diſcharge of my conſcience uſe thoſe other meanes which God hath put into my hands, to ſave that which the follies of particular men may hazard to looſe.

Take not this as a threatning, for I ſcorn to threaten any but my equals; but an admonition from him that, both out of nature and dutie, have moſt care of your preſervations and proſperities: and (though I thus ſpeak) I hope that your endeavours at this time will be ſuch, as ſhall not onely make me approve your former Counſels, but lay on me ſuch obligations as ſhall binde me by way of thankfulneſs to meet often; for be aſſured that nothing can be more pleaſing to me, then to keep a good correſpondence with you.

I will onely adde one thing more, and then leave my Lord Keeper *to make a ſhort paraphraſe upon the Text I have delivered you; which is, to remember a thing to the end we may forget it. You may imagine that I came here with a doubt of ſucceſs of what I deſire, remembring the diſtractions at the laſt meeting: but I aſſure you that I ſhall very eaſily and gladly forget and forgive what is paſt, ſo that you will at this preſent time leave the former waies of diſtractions, and follow the counſell late given you,* to maintain the unity of the Spirit in the bond of Peace.

THE

The Lord Keeper Coventry's *Speech* 17. *March* 1627.

My *Lords*, and you the *Knights*, *Citizens*, and *Burgeſſes* of the Houſe of *Commons*,

IF I had been delighted in long ſpeaking, yet the example and commandment of his *Majeſtie* hath been more then enough to refraine the ſuperfluitie of that humour, but here is yet more; For that ſhort and excellent compacted Speech which you have heard from his *Majeſtie*, begins with a reaſon, It is a time for action and not for ſpeech. Examples and Command maſter the VVill, and Reaſon the Underſtanding: and therefore you may expect nothing from me but brevity.

You have heard the matter already, and I doubt not but with reverence, as the weight and authority requires, you have imprinted it in your mindes: and the matter being known, long ſpeeches from me were but babling to beat the aire.

Yee are here in *Parliament* by his *Majeſties* writ and royall command, to conſult and conclude of the weightie and urgent buſineſſe of this Kingdome. VVeighty it is and great, as great as the honour, ſafety and protection of Religion, King and Country; and what can be greater? Urgent it is: It is little pleaſure to tell or think how urgent, and to tell it with circumſtances were a long work; I will but touch the ſumme of it in few words.

The *Pope* and Houſe of *Auſtria* have long affected, the one a Spiritual, the other a Temporal *Monarchie*: and to effect their ends, to ſerve each others turn, the Houſe of *Auſtria*, beſides the rich and vaſt Territories of both the *Indies* and in *Africa* joined together, are become Maſters of *Spain* and *Italy*, and the great country of *Germany*. And although *France* be not under their ſubjection, yet they have endeavoured all about him: the very bowells of the Kingdome ſwaied by the *Popiſh* faction, they have gotten ſuch a part and ſuch intereſt in the Government, that under pretence of Religion, to root out the *Proteſtants* and our Religion, they have drawn the King to their adherence ſo farre, that albeit upon his *Majeſties* interpoſition by his Ambaſſadours, and his engagement of his royall word, there was between the King and his Subjects Articles of agreement, and the Subjects were quiet, whereby his *Majeſtie* intereſſed in that great Treaty, was bound to ſee a true accompliſhment; yet againſt that ſtrict alliance, that Treaty hath been broken, and thoſe of the Religion have been put to all extremity, and undoubtedly will be ruinated without preſent help: ſo as that King is not oneiy diverted from aſſiſting the common Cauſe, but hath been miſled to engage himſelf in hoſtile acts againſt our King, or other Princes, making way thereby for the Houſe of *Auſtria*, to the ruine of his own and other Kingdomes.

Other Potentates that in former times did ballance and interrupt the growing greatneſſe of the Houſe of *Auſtria*, are now removed and diverted. The *Turk* hath made peace with the *Emperour*, and turned himſelf wholly into warrs with *Aſia*; the King of *Sweden* is embroiled in a warre with *Poland*, which is invented by *Spaniſh* practices, to keep that King from ſuccouring our part; the King of *Denmark* is chaſed out of his Kingdome on this and on that ſide the *Sound*, ſo as the houſe of *Auſtria* is on the point to command all the Sea-coaſts from *Dantzick* to *Emden*, and all the Rivers falling into the Sea in that great extent, ſo as beſides their power by Land, they beginne to threaten our part by Sea, to the ſubverſion of all our State.

In the *Baltique* Sea they are providing and arming all the ſhips they can build or hire, and have at this time their Ambaſſadours threatning at *Lubeck* to draw into their ſervice the Hans-Townes; whereby taking from us and our neighbours the Eaſt-land trade, by which our Shipping is ſupplied, they expect without any blow given to make themſelves maſters of the Sea. In thoſe Weſtern parts by the *Dunkerkers*, and by the now *French* and *Spaniſh* Admirall, to the ruine of Fiſhing, of infinite conſequence both to us and the *Low-Countries*, they infeſt all our coaſt, ſo as wee paſſe not ſafely from port to port. And that Fleet which lately aſſiſted the *French* at the Iſle of *Ree*, is now preparing at St. *Andrea*, with other ſhips built in the coaſt of *Biſcai* to re-inforce it, and a greater Fleet is making ready at *Lisbon*, where beſides their own, they do ſerve themſelves upon all ſtrangers bottoms coming to that coaſt for trade. And theſe great preparations are no doubt to aſſault us in *England* or *Ireland*, as they ſhall finde advantage, and a place fit for their turn.

Our friends of the *Netherlands*, beſides the feare that juſtly troubles them leſt the whole force of the *Emperour* may fall down upon them, are diſtracted by their Voyages into the Eaſt, which hath carried both men and money into another world, and almoſt divided them at home.

Thus are we even ready on all ſides to be ſwallowed up; the *Emperour*, *France*, and *Spain* being in open warr againſt us, *Germany* over-run, the King of *Denmark* diſtreſſed, the King of *Sweden* diverted, and the *Low-Countrey*-men diſabled to give us aſſiſtance. I ſpeak not this to increaſe fear unworthy of *Engliſh* courages, but to preſſe to proviſion worthy the wiſdome of a *Parliament*. And for that cauſe his Majeſtie hath called you hither, that by a timely proviſion againſt thoſe great imminent dangers, our ſelves may be ſtrengthened at home, our Friends and Allies incouraged abroad, and thoſe great cauſes of feare ſcattered and diſpelled.

And becauſe in all warlike preparations Treaſure bears the name, and holds the ſemblance of the nerves and ſinewes, and if a ſinew be too ſhort or too weak, if it be either ſhrunk or ſtrained, the part becomes unuſefull: it is needfull that you make a good and timely ſupply of treaſure, without which all counſells will prove fruitleſſe. I might

preſſe

preſſe many reaſons to this end, I will but name few.

Firſt for his *Majeſties* ſake, who requires it: great is the duty which we owe him by the law of God, great by the law of Nature and our own Allegeance, great for his own merit, and the memory of his ever bleſſed Father. I do but point at them, but me thinks our thoughts cannot but recoyle on our conſideration, touched by his Majeſtie, which to me ſeemes to ſound like a Parliamentarie part or Covenant.

A Warre was adviſed here, Aſſiſtance profeſſed, yea and proteſted here; I do but touch it, I know you will deeply think on it, and the more for the example the King hath ſet you, his Lands, his Plate, his Jewells he hath not ſpared to ſupply the War; what the People hath proteſted, the King for his part hath willingly performed.

Secondly for the *Cauſe* ſake: it concernes us in Chriſtian Charity to tender the diſtreſſes of our Friends abroad, it concernes us in honour not to abandon them that have ſtood for us; and if this come not cloſe enough, you ſhall finde our Intereſt ſo woven and involved with theirs, that the Cauſe is more ours then theirs. If Religion be in perill, wee have the moſt flouriſhing and orthodoxe Church; if Honour be in queſtion, the ſteps and monuments in former ages will ſhew that our Anceſtours have left us as much as any Nation; if Trade & Commerce be in danger, we are Iſlanders, it is our life: all theſe at once lye at ſtake, and ſo doth our ſafety and being.

Laſtly, in reſpect of the manner of his Majeſties demand, which is in *Parliament*, the way that hath ever beſt pleaſed the ſubjects of *England*: and good cauſe for it; for Aides granted in Parliament work good effects for the People; they be commonly accompanied with wholeſome Lawes, gracious Pardons, and the like: Beſides, juſt and good Kings finding the love of their people, and the readineſſe of their ſupplies, may the better forbear the uſe of their Prerogatives, and moderate the rigour of the Lawes towards their Subjects.

This way, as his Majeſtie hath told you, he hath choſen not as the onely way, but as the fitteſt; not as deſtitute of others, but as moſt agreeable to the goodneſſe of his own moſt gracious diſpoſition, and to the deſire and weale of his people. If this be deferred, Neceſſity and the Sword of the Enemy make way to the others. Remember his Majeſties admonition, I ſay, remember it. Let me but adde and obſerve Gods mercy towards this land above all others: the torrent of Warre hath overwhelmed other Churches and Countries, but God hath hitherto reſtrained it from us, and ſtill gives us warning of every approaching danger to ſave us from ſurprize. And our gracious Sovereign in a true ſenſe of it calls together his High Court of *Parliament*, the lively repreſentation of the wiſdome, wealth, and power of the whole Kingdome, to joyn together to repell thoſe hoſtile attempts, which have diſtreſſed our Friends and Allies, and threatned our ſelves.

And therefore it behoves all to apply their thoughts unto Counſell and Conſultations worthy the greatneſſe and wiſdome of this Aſ-

ſembly, to avoid diſcontents which may either diſtemper or delay, and to attend that *unum neceſſarium*, the common Cauſe, propounding for the ſcope and work of all the debates, the generall good of the King and Kingdome, whom God hath joyned together with an indiſſoluble knot, which none muſt attempt to cut or untie. And let all by unity and good accord, endeavour to pattern this Parliament by the beſt that have been, that it may be a pattern to future Parliaments, and may infuſe into Parliaments a kinde of multiplying power and faculty, whereby they may be more frequent, and the King our Sovereign may delight to ſit on this Throne, and from hence to diſtribute his graces and favours amongſt his people.

His *Majeſtie* hath given you cauſe to be confident of this you have heard from his royall mouth, which nevertheleſſe he hath given me expreſſe command to redouble; If this Parliament by their dutifull and wiſe proceedings ſhall but give this occaſion, his *Majeſtie* will be ready, not onely to manifeſt his gracious acceptation, but to put out all memory of thoſe diſaſters that have troubled former Parliaments.

I have but one thing to adde, and that is, As your conſultations be ſerious, ſo let them be ſpeedy. The Enemy is beforehand with us, and flies on the wings of Succeſſe: we may dallie and play with the houre-glaſſe, that is in our powers, but the houre will not ſtay for us, and an opportunity once loſt cannot be regained. And therefore reſolve of your Supplies, that they may be timely and ſufficient, ſerving the occaſion. Your Counſel, your Aid, all is but loſt, if your Aid be either too little or too late: And his *Majeſtie* is reſolved that his affaires cannot permit him to expect it overlong.

And now having delivered what his *Majeſtie* hath commanded me concerning the cauſe of this Aſſembly, his *Majeſtie* willeth that you of the Houſe of *Commons* repaire to your owne Houſe, to make choice of a *Speaker*, whom his Majeſtie will expect to be preſented unto him on *Wedneſday* next at two of the clock.

The Speaker Sir John Finches *Speech*, March 19. 1627.

Moſt Gracious *Sovereign*,

YOur obedient and loyall Subjects, the *Knights*, *Citizens* and *Burgeſſes* by your royall Summons here aſſembled, in obedience to your gracious direction, according to their antient uſage and priviledge, have lately proceeded to the choice of a *Speaker*, and, (whether ſequeſtring their better Judgements for your more weighty affairs, or to make it known that their honour and wiſdome can ſuffer neither increaſe nor diminution by the value or demerits of any one particular Member, in what place ſoever ſerving them) omitting others of worth and ability, they have fixed their eyes of favour and affection on Mee.

Their long knowledge of my unfitneſſe every way to undergo a charge of this important weight and conſequence, gave mee ſome hope they would have admitted my juſt excuſe: yet for their further and clearer ſatisfaction, I drew the curtains, and let in what light I could upon my owne inmoſt thoughts, truely and really diſcovering to them what my ſelf beſt knew, and what I moſt humbly beſeech your royall *Majeſtie* to take now into conſideration; that of ſo many hundreds ſitting amongſt them, they could have found few or none whoſe preſentation, to your *Majeſtie* would have been of leſſe repute, or advantage to them: For, *& impeditioris linguæ ſum*, and the poore experience I have of that royall Aſſembly is ſo ill ballanced with true judgement, that every guſt and wave hath power on me; whereby I ſhall not onely ſuffer in my own particular, but (which I apprehend with much more care and ſorrow) prejudice their common Intereſt.

Wherefore, dread and dear *Sovereign*, as low as the loweſt ſtep of your royal throne I humbly bend, appealing to your great & ſovereign judgement for my diſcharge from this ſo unequall a burthen impoſed on me: moſt humbly and earneſtly beſeeching your moſt excellent *Majeſtie*, for the honour of that great Councell, and the better digeſtion of publick Services there, and withall to avert ſo ill an *Omen* as the choice of Me in the beginning of a *Parliament*, ordained (I hope) for the joy of our own, and the envy of other Nations, that by your gracious Command the Houſe may re-conſult, and ſettle their better thoughts on ſome more worthy their election, and your *Majeſtie*'s approbation.

The Lord Keeper Coventry's *Reply.*

Mr. *Speaker*,

HIs *Majeſtie* with a moſt gracious eare and princely attendance hath heard your humble excuſe: he knowes well the importance of your place, but your ability to diſcharge it he approves, and commends the election of the Houſe of *Commons*; and therein receives the more content, becauſe they have followed the light taken from himſelf, who formerly made choice of you to ſerve in a place of Truſt both about himſelf, and his royall Conſort.

The *Omen* cannot be ill, and the People ſo readily follow him whom God hath ordained to go in and out before them. And therefore knowing your tackling to be ſtrong, and finding your ſaile moderate, and not over-born, his *Majeſtie* doth doubt neither guſt nor wave to endanger your paſſage. But ſince you are duely choſen, his *Majeſtie* counſells and commands, that unto your humility you adde reſolution and courage: they ſtand well together, and being well joyned, they will arme all your abilities to that great Imployment of ſervice to your King and Countrie, which as the *Commons* by their uniforme voice have put upon you, ſo his *Majeſtie* by his royall approbation doth girt unto you, and ſettle you *Speaker*.

The Speaker Sir John Finches *Reply.*

IT is now no time nor manners longer to diſpute with my Lord the King, but with all joy of heart and alacrity humbly and thankfully to meet ſo great a favour from the beſt of Maſters and the beſt of Men. Therefore firſt, I lift up my heart to him that ſits on the Throne of heaven, *per quem Principes imperant & Potentes decernunt juſtitiam*, humbly begging at his hands, that made the tongue, to give me ſpeech, and that framed the heart of man, to give me underſtanding; for I am but as Clay in the hands of the Potter, and he will mould me for honour or diſhonour as beſt ſeemes good unto him. Next, I bow my knees unto your moſt excellent *Majeſtie* in all humble and hearty acknowledgement of this, and many other your great and gracious Favours.

The truth of mine heart, full of zeale and duty to your *Majeſtie* and the publike as any mans, quits me from all feare of running into wilfull and pregnant errours; and your *Majeſtie*'s great goodneſſe, of which I have been ſo large a partaker, gives me ſtrong aſſurance that, having by your gracious beames drawn me up from earth and obſcurity, you will ſo uphold me by a benigne and gracious interpretation of all my words and actions, that I fall not down again like a crude and imperfect vapour, but conſume the remainder of my dayes in the zeal of your *Majeſtie*'s ſervice.

This great and glorious Aſſembly, made perfect by your royall preſence, like a curious Perſpective, the more I behold it, with the more joy and comfort I finde a lively repreſentation of that true happineſſe, which under your *Majeſtie*'s gracious government we all enjoy. A better tongue were fitter to expreſſe it; but a rich Stone retaines his value, though ill ſet.

Here in the fulneſſe and height of your Glorie (like the Sun in the exaltation of his Orbe) ſits your moſt excellent *Majeſtie*, the ſovereigne *Monarch* of this famous *Iſle*, in a Throne made glorious by a long ſucceſſion of many and great *Princes*. A meditation worthy our better thoughts, that we live neither enthralled to the fury of the giddy-headed multitude, nor yet to the diſtracted wills of many Maſters, but under the command of a King, the ſtay and ſtrength of a People; one (as *Homer* ſaith well of a King) πολλῶν ἀνδρῶν ἄλλων, not to be laid in common ballance with other men: for Kings know no other Tenure but God's ſervice, and their value it is onely tried at his Beam: whence the Poets ſaid, the Parents of the firſt Kings were *Cælum & Terra*, Divine inſtitution and Humane approbation.

Beſides that it is a Sovereigntie alſo hereditarie, which makes the Common-wealth the King's care, as that which is the King's own Patrimony, and the inheritance of his Children; when elective

Monarchies quickly runne to ruine, and are commonly made poor by the enriching of ſeveral Families.

On your right hand are the reverend, religious and learned *Prelates*, the Lights of the *Church*, fit to be ſet in golden Candleſticks, and not made contemptible by Paritie or Povertie: lively *Idea's* of that bleſſing above the reſt, which by God's great goodneſſe and your *Majeſtie's* great pietie this Realme enjoyes, the libertie of the Goſpell, and the free profeſſion of God's true Religion.

Your *Majeſtie* paſſed the fierie tryall in *Spaine*, and gave us then aſſurance that your faith was built on that rock againſt which the gates of hell ſhall never prevaile. Since your coming to the Crowne, by your royall Edict you have baniſhed thoſe Incendiaries of *Rome*, the *Prieſts* and *Ieſuites*, enemies to our Church and State; ſo as now they are either gone, or lurk in corners like the ſonnes of darkneſſe. You have given life to the Lawes againſt *Recuſants*, and by your own exemplarie pietie have drawn more then you have compelled to come to Church. *Euge, ingredi, ut impleatur domus mea*, was his command that made the great Feaſt, and is the duty of Magiſtrates.

And certainly, dread *Sovereigne*, true Religion will ever be a target to them that are a buckler to it: No cement ſo ſtrong to hold your Subjects hearts together in their true obedience.

Our Religion never bred a *Clement*, or a *Ravillack*: and that execrable *Villany* never to be forgotten here, when all of us (*horreſco referens*) in an inſtant ſhould have been turned into aſhes, and thoſe ſcattered in the winde, was a Monſter could never have been ingendred, but by the *Divel* or the *Ieſuites*.

On your left hand ſit your *Nobles*, the Lights of Honour, full of courage and magnanimitie, yet in right diſtance between Crown and People, neither over-ſhadowing the one, or oppreſſing the other.

Before your Throne, like the twelve Lyons under *Solomon's* Throne, ſit the Lights of Juſtice, your grave *Iudges* and Sages of the Law, learned and juſt as many Ages have known, and learning juſtice by your example.

Our Lawes, as excellent as they are, (I am ſure no humane Lawes excell them, nor could ſo well ſuite with the conſtitution of this People) were they in the power of corrupt or ignorant men (I know not which were worſe, for one will perhaps oftner erre then the other bribe) Juſtice could never keep her right chanel, nor runne cleare, as in your *Majeſtie's* reigne it ever hath.

I muſt not forget the other Lights, the *Knights*, *Citizens*, and *Burgeſſes*, the Repreſentative of their Eſtate, who although they move lower and at more diſtance from your royall Perſon, yet

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(I am confident) will ever be found conſtant to the Poles of Love and Loyaltie.

'Tis a gracious Favour of your *Majeſtie* and our former Kings I have often thought on, that when both theſe Houſes are humble ſuitors for any thing, they are never denyed; *Le Roy s'aviſera*, The King will adviſe of it, is the greateſt denyall. And I aſſure my ſelf your *Majeſtie* ſhall finde all your Subjects ſo full of dutie to your Crown, and of true and loyall affection to your royall Perſon, that you ſhall never have cauſe to think your gracious Favours ill beſtowed on them.

The Union of Hearts, *Sir*, is a greatneſſe beyond that of the Kingdome, to which you are Heire.

Et penitus toto diviſos orbe Britannos,

it is a Name of advantage to this *Iſland*, if the Diviſion be not amongſt our ſelves: which the God of Unitie for his mercies ſake forbid, and ſo knit our Hearts in love one to another, and all of us in duty and loyalty to your moſt excellent *Majeſtie*, that this renowned *Iſland* periſh not by our Diſtractions, but may ever flouriſh, and be like *Ieruſalem* the Citie of God, where his Name may be for ever honoured.

Great and glorious have been the Actions of your royal Predeceſſours, yet greater remaine for your *Majeſtie*, and moſt of theirs attend you for their perfection.

The firſt *Chriſtian King* of *Europe*, the firſt that abated the ſwelling pride of *Rome* by baniſhing his uſurped power, and God's true Vice-gerent, the firſt that eſtabliſhed the true Religion now profeſt, were all Kings of *England*, and the laſt a young one.

Queen *Elizabeth* was a woman, yet *Spaine* hath cauſe to remember her: the *Proteſtants* of *France* and the *Low-Countries* will never forget her. And were *Henry* the Great alive, he would ſay, That in requitall of the love of this Kingdome ſhewed him, he hath ſent us one of his owne Loynes, your royall Conſort, our moſt gracious *Queen*, to propagate theſe bleſſings to us and our poſteritie for ever. Your royall *Father* (of ever bleſſed and famous memorie) had a Reigne like *Solomon's*; for Religion, no man knew more a luſtre or advantage to him, this Age ſhall deliver it to the next, and all Ages ſhall ſee it in his Kingly Workes.

But while under his glorious Reigne we abode in peace and plenty, our hands had forgot to warre and our fingers to fight, till at laſt by your Princely mediation, upon the humble ſuite of both theſe Houſes, the two Treaties were diſſolved, and a foundation laid for your *Majeſtie* to reſtore us to our antient and Military honour; which I doubt not will quickly be.

Eritis ſicut Dii, was the Serpent's Counſell, and ruined Mankinde: nor is it fit for private men (much leſſe for me) to ſearch into the Counſells or Actions of Kings. Onely, *Sir*, give me leave from an heart full of zeale to your glorie and greatneſſe, to ſay to your *Majeſtie*, the Times require you, Religion calls upon you to goe on with that Kingly Courage you have begunne, till the ſtate of *Chriſtendome* be ſettled in the right Balance again.

We ſee how the *Eagle* ſpreads his wings in *Germany*, reaching with his talons as farre as the *Sound* and *Baltick* ſea: *Denmark* and *Sweden* in danger of utter ruine by ſeizing: the *Electorates*, the choice of the *Empire*, inveſted in a manner ſolely in the Houſe of *Auſtria*: Our Religion in *France* and every where never ſo neare a period. And we know who it is for whom all this works; he of whom the boaſt is made, *Allà qui Monarqui naſciendo d'el monendo*, who by the ruine of us and our Religion will make a new *Zodiack*, and draw an *Ecliptick line* through the Eaſt and Weſt *Indies*. But he that ſits on high will in his good time laugh them to ſcorne; and, as that wiſe Woman ſaid to King *David*, God will make to my Lord the King a ſure houſe, if my Lord ſhall continue to fight the battels of *Iehovah*: and let all *England* ſay, *Amen*.

I have preſumed too farre upon your royall Patience, and therefore I will conclude with a few words for them that ſent me, who are humble ſuitours to your excellent *Majeſtie*,

Firſt, for our better attending the publick and important ſervices, that our ſelves and our neceſſary Attendants may be free, both in our perſons and goods, from all arreſts and troubles, according to our ancient priviledge and immunities.

Next, that, ſince that in all great Councells where difference of opinion is, truth is beſt diſcovered by free debates, your *Majeſtie*, according to our like ancient uſe and priviledge, will be graciouſly pleaſed to allow us liberty and freedome of ſpeech, and I aſſure my ſelf we ſhall not paſſe the latitude of duty and diſcretion.

That upon all occurrences of moment, fit for reſort to your owne perſon, your *Majeſtie*, upon humble ſuit, at your beſt leiſure, will vouchſafe us acceſſe to your royall perſon.

And

And laſtly, that all our proceedings being lodged in your royall heart with belief of our zeal and loyalty, we may reap the fruits of it, by your *Majeſtie*'s gracious and favourable interpretation.

One word more I humbly begg for my ſelf, That though it be the beginning of a *Parliament*, I may now and ever enjoy your *Majeſtie*'s moſt gracious and generall free Pardon.

The Lord Keeper Coventry's *ſecond Reply.*

Mr. *Speaker*,

HIs *Majeſtie* with no leſſe content then attention hath heard your learned Diſcourſe: he obſerves your beginning with his gracious incouragement and advice, not forſaking your humble modeſtie, but adding to it thankfulneſſe, alacrity, and joy of heart; a juſt and right temper.

He obſerves you derive theſe aright, firſt, from the Throne in heaven: he lookes thither with you, and joynes in prayer, that both you and all this Aſſemblie by that Divine hand and power be moulded, and procured for the honour, ſafety and good of the *Church* and *Kingdome*. Next, you apply your ſelf to the Throne on earth: his *Majeſtie* doth graciouſly accept your proteſtations of the truth of your heart, the fulneſſe of your zeale and duty to his *Majeſtie* and the Publick: he believes it, and that not in you alone, but in all this Aſſembly; ſo that you are ſecure not onely from wilfull and pregnant errours, but from doubt of ſiniſter interpretation.

My Lord the King is as an Angel of God, of a quick, of a noble and juſt apprehenſion; he ſtraines not at gnats, he will eaſily diſtinguiſh between a vapour and a fogg, between a miſt of errour and a cloud of evill; right he knowes, if the heart be right, *Out of the abundance of the heart the mouth ſpeakes.*

You proceed to a ſurvey of the luſtre of this great and glorious Aſſemblie, and in that, as in a curious Cryſtall, you obſerve the true happineſſe which we all here enjoy. You have diſtributed and divided aright, and whoſoever ſees it otherwiſe hath an evill eye, or a falſe glaſſe. We have enjoyed it long, through the happy meanes of gracious and good Princes; and the way to enjoy it ſtill, is to know and heartily to acknowledge it, and that *God hath not done ſo to any other Nation.* It is a prime cauſe or meanes of this our happineſſe.

You mention the forme of Government under which we live, a *Monarchie*, and the beſt of Monarchies, where Sovereignty is hereditarie, no *Inter-Regnum*, nor competition for a Crown; Deſcent and Succeſſion are all one. The Spirit of God by the mouth of the wiſeſt of Kings long ſince proclaimed this happineſſe, *Bleſſed art thou, O Land, where thy King is the ſon of Nobles.*

The frames of other States are ſubject ſome to inconſtant Levitie,

Levitie, ſome to Faction, ſome to Emulation and Ambition, and all to manifold Diſtempers, in which the People go to wrack. The Monarchie is moſt naturall, and in it, Unity is the beſt cement of all government, principally in reſpect of the unity of the Head, which commands the reſt. And therefore other States, when they have tryed a while, doe for the moſt part reſolve into this, as into the beſt for Peace, for Strength, and for Continuance. But formes of other governments, though never ſo exact, move not of themſelves, but are moved of their governours. And therefore our Monarchie, (as you have truly ſaid) this glorious Aſſemblie, the lively image and repreſentation of our Monarchie, is made happy and perfect by the Royall Preſence that ſits here in his higheſt Royal Throne, the Throne of the Law-giver, glorious in it ſelfe, glorious by thoſe happy Lawes and Oracles which have iſſued from it, and moſt glorious by them that ſit on it, his *Majeſtie* and his Royall Progenitours, incomparable Kings, that with ſo much honour have ſwayed the Sceptre of this Kingdome ſo many ſucceſſions of Ages.

In the next place, after the Throne of Majeſtie, you look into the Chaire of Doctrine, the reverend *Prelates*, and upon the ſtate of Religion, their proper charge. This is the bleſſing of all bleſſings, the priviledge and aſſurance that ſecures us of all the reſt, that as our Religion is moſt ſincere and orthodoxe, ſo our Clergie is eminent; both for purity of Doctrine and integritie of Life; our Prieſts are clothed with righteouſneſſe, and their lips preſerve knowledge, and therefore God's Saints may and doe ſing with joyfulneſſe.

I muſt joyn with you in attributing this tranſcendent bleſſing to us, as in the firſt place to God's goodneſſe, ſo in the ſecond to his *Majeſtie*'s piety, who, following the ſteps of his ever-bleſſed Father, is carefull that all the Lamps of the Church may be furniſhed with Oyle, and eſpecially thoſe which are ſet on golden Candle-ſticks with the pureſt and beſt oyle. The Schools alſo and nurceries of Learning, never ſo repleniſhed, eſpecially with Divinity, as in this laſt Age, as they all ſhew his *Majeſtie*'s Piety, ſo are they infallible Arguments of his Conſtancy.

The triall, which you call the fierie triall, undergone by his *Majeſtie* in the place of danger, and again the power and policie of *Rome* and *Spaine*, hath approved his reſolution inimitable: and his own remarkable example in his cloſet, and his chamber, his ſtrict over-ſight of and command to his Houſhold ſervants, and his charge to his Biſhops and Judges, his Edicts, his Proclamations and Commiſſions, and the like, for the execution of the Lawes, and his general care to preſerve the fountain pure both from Schiſme and Superſtition, are faire fruits and effects of a pious and zealous reſolution.

From

From the chaire of Doctrine you turn to the ſtate of Honour, unto the *Nobles* and *Barons* of *England*. Theſe are *Robur belli*, who for the ſervice of the King and Kingdome, are to make good with their Swords what the *Church-men* muſt hallow and bleſſe by their Prayers. And therefore as the Prelates are the great Lights of the Church, ſo the Nobility are the Starres of the State; and you know that the ſtarres have fought, and fought powerfully againſt the enemies of God.

From the ſtate of Honour, you come to the ſtate of Juſtice, and to the twelve Lyons under *Solomon*'s Throne, the *Judges* and Sages of the Law, and as their peculiar charge intruſted to them by our Sovereigne, the Lawes of the Kingdome: Lawes undoubtedly fitted to the conſtitution of this people, for *Leges Angliæ* and *Conſuetudines Angliæ* are *Synonyma*, and *Conſuetudo eſt altera natura*; ſo as beſides the juſtneſſe and rightneſſe of the Lawes, they are become naturall to our people, and that is one of the powerfulleſt meanes which begetteth obedience: and ſuch Lawes in the mouthes of learned and upright Judges, are like waters in a pure chanel, which the fairer it runs, the clearer they run, and produce that whereof *Solomon* ſpeaks *Prov.* 29.2. *When the righteous are in authority, the People rejoyce.*

From the Law you paſſe to the *Knights*, *Citizens* and *Burgeſſes*, and the third Eſtate, who repreſent the *Commons* of *England*, in whom the Scripture is verified, *In the multitude of People is the Kings honour*: and therefore you may be ſure that diſtance of place and order breeds no diſtance in affection; for wiſe Kings ever lay their honour next to their hearts. Kings are *Paſtores populi*; and the Shepherds care is nothing leſſe to the furtheſt, then to the next part of his Flock; and it is aſmuch towards the leaſt of his Lambs, as towards the greateſt Cattel. And as in the Natural bodie, no member is ſo remote, but it is ſtill within the care of the head: ſo in this great Politick bodie of the Kingdome, no ranck or order of People ſo low, is at ſuch diſtance from the Throne, but it dayly feeles the influence and benefit of the Kings care and protection. And, to ſay the truth, in a well-governed Kingdome, the ſuperiour rancks of Nobles, of Judges, and of Magiſtrates, are not ordained for themſelves, but as conduits for the Kings juſtice, protection and goodneſſe to the lower rancks of his People. And as the People are, ſo its juſt cauſe they ſhould be, conſtant to the Poles of Love and Loyalty.

And thus having peruſed both Houſes by divided parts, joyn them together, and in that juncture, you believe truly and materially that the greateſt denyal of their joynt requeſts is, *The King will adviſe*. A note very remarkable: It ſhewes the indulgence of Kings, it ſhews alſo the wiſdom and judgement of the Houſes; the King not willing to deny his People, People not willing to preſſe

preſſe their King to a deniall; the one wiſe and modeſt in their requeſts, and the other moderate and ſweet in the anſwer. This is the ancient and right way of union in Parliament. The God of unity keep it in this, and all inſuing Parliaments.

This union you rightly call the union of Hearts, and a greatneſſe beyond the Kingdomes which the King inherits: ſo then its a preſent fit for a wiſe people to offer to their gracious King. Wiſe and magnanimous Kings are a ſpeciall gift from God, having hearts capable of greatneſſe: union of hearts is greateſt, and greatneſſe was never unwelcome to Kings; and therefore preſent and offer it to your King, you cannot doubt of acceptance.

Having ſpoken of union, you fall preſently into a memoriall of the great and glorious actions of his *Majeſtie*'s Predeceſſours, and into the height and contemplation of greater that remain. If I miſtake not your meaning, you would have it underſtood that the union of Prince and people make way to thoſe remarkable acts of former times, and that we that wiſh the like ſucceſſe in our time ſhould look back upon our Forefathers. Wiſdome requires it, Honour and the Time requires it, that we ſhould ſhew our ſelves the ſonnes of our Aunceſtours, at leaſt in holding that which they left us.

The pride of *Rome* abated (as you ſay) by *England*, now lifts up her horns againſt Religion: Gods vine planted and deeply rooted here, overſpread into our neighbour Countreys, hath of late loſt many of her goodly branches. The *Auſtrian* Eagle, that wanted feathers till of late, now ſoares and preys at will over all. *Spain*, ſo often foiled by us, hath (by diſguiſed treaties) diſpoiled of their patrimonie thoſe princely *Branches* of our royall *Cedar*, and poſts apace to his univerſall Monarchy, to the ruine of us, our Friends and Religion.

God hath his time, and I truſt a time to ſtop their courſe: I know not but we may expect it as well now as ever. There is a reſolution in our King, and there is, I truſt, (for I am ſure there was) a reſolution in our Parliament, for great actions. Our king as he hath a *Solomon*, ſo hath he many *Davids* in the glorious catalogue of his royall Deſcent, and hath linked himſelf in the Houſe of *Henry* the Great, and he bears a glorious and auſpicious name ſutable to his thoughts and deſires: and therefore ſince Honour and Religion call for it, and ſince you have incouraged him to fight *Iehovah*'s battels, let all put to their hands, that our King and Nation may have the honour to ſet *Chriſtendome* in her right Balance.

And now to come to the petitions you have made for the Houſe; his *Majeſtie* moſt graciouſly and readily grants them all according to your true and ancient Rights and Priviledges of *Parliament*, which his *Majeſtie* truſts you will have care not to exceed or tranſgreſſe: and therefore you may go chearfully together, and ſpeedily ſettle about the publick affairs. And the almighty God proſper the works of your hands, I ſay, the almighty God proſper your handy-work.

Mr. Goodwin's *Speech, March* 22. 1627.

Mr. *Speaker,*

IT hath pleaſed his *Majeſtie* in his laſt Speech to intimate unto us the cauſe of our meeting, which is ſupply againſt the great and common dangers that threaten the ruine of this Kingdome: and the time of our ſitting cannot be long, and therefore he wiſheth to avoid tedious reſolutions. In conformity whereunto I propound that, laying aſide all other matters, we addreſſe our ſelves to that for which we were called hither: wherein as in the firſt place we have well begun, in our pious humiliation towards almighty God; ſo let us now proceed to ſerve and to ſupply the king, yet ſo as we ſatisfie our Countrey that ſent us hither, and preſerve our Rights and Priviledges, which have as ſurely been broken and infringed, as undoubtedly they belong to us.

Sr. Francis Seymour's *Speech, March* 22. 1627.

THis is the great *Councel* of the Kingdome, and here, if not here alone, his *Majeſtie* may ſee as in a true glaſſe the ſtate of the Kingdome. We are all called hither by his *Majeſtie*'s writs to give him faithfull counſel, ſuch as may ſtand with his honour, but that we muſt do without flatterie, and choſen by the Commons to deliver up their juſt grievances, and this we muſt do without fear. Let us not be like *Cambyſes* Judges, who being demanded of him concerning ſomething unlawfull, ſaid, Though there were no written Law, the *Perſian* Kings might do what they liſt. This was baſe flatterie, fitter for reproof then imitation: and as flatterie, ſo fear taketh away the judgement. For mine own part, I ſhall ſhun both theſe, and ſpeak my conſcience with as much duty to his *Majeſtie* as any man, not neglecting the Publick.

But how can we ſpeak our affections, while we retein our fears, or ſpeak of giving, till we know whether we have any thing to give or not? For if his *Majeſtie* ſhall be perſwaded to take what he will, what need we to give?

That this hath been done, appeareth by the billetting of Souldiers, a thing no way advantageous to his ſervice, and a burthen to the Common-wealth; the impriſonment of Gentlemen for the *Loane*, who if they had done the contrary for fear, their faults had been as great as theirs, who were Projectours in it. To countenance theſe proceedings, hath it not been preached in the pulpit, or rather prated, *All we have is the Kings?* But when they forſake their own calling,

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and turn ignorant States-men, we ſee how willing they will be to change a good conſcience for a Biſhoprick.

It is too apparent the people ſuffer more now then ever: will you know the true reaſon? we ſhall find thoſe *Princes* have been in greateſt wants and neceſſities, that have exacted moſt from their Subjects. The reaſon is plain. A *Prince* is ſtrongeſt by faithful and wiſe Counſel: I would I could truly ſay ſuch had been imployed abroad. I ſpeak this to this end, to ſhew the defect proceeded not from this Houſe.

I muſt confeſſe he is no good Subject that would not willingly and freely lay down his life, when the End may be the ſervice of his *Majeſtie*, and the good of the Common-wealth. But he is no good Subject, but a ſlave, that will have his goods taken from him againſt his will, and his Liberty againſt the Laws of the Kingdome. In doing this we ſhall but tread the ſteps of our Fore-fathers, who ſtill preferred the publick intereſt before their own rights, nay before their own lives. It will be a wrong to Us, to our Poſterities, to our Conſciences, if we ſhall forgo this. This we ſhall do well to preſent to his *Majeſtie*.

I offer this in the generall, thinking the particulars fitting for Committees. What I may now ſay, or ſhall then, I ſubmit to better Judgements.

Sr. Thomas VVentworth's ſpeech, March 22. 1627.

MAy this dayes reſolution be as happy, as I conceive the Propoſition (which now moves me to riſe) to be ſeaſonable and neceſſary; for which we ſhall either look upon the King or his people. It did never more behove this great Phyſician the *Parliament* to affect a true conſent amongſt the parts, then now. This debate carries with it a double aſpect, towards the Sovereigne, towards the Subject: though both be innocent, yet both are injured, both to be cured. In the repreſentation of Injuries I ſhall crave your attention; in the Cure I ſhall beſeech your equall cares and better judgements.

Surely, in the greateſt humility I ſpeak it, theſe illegall wayes are puniſhments and marks of indignation; the raiſing of Levies ſtrengthened by Commiſſion with unheard of inſtructions, the billetting of Souldiers by the Lieutenants and Deputy-lieutenants, have been as if they could have perſwaded *Chriſtian Princes*, nay worlds, the right of Empire had been to take away by ſtrong hand, and they have endeavoured (as farre as was poſſible for them) to do it.

This hath not been done by the *King*, (under the pleaſing ſhade of whoſe Crown I hope we ſhall ever gather the fruits of Juſtice) but by Projectours: They have pretended the Prerogative of the King beyond the juſt proportion, which makes the ſweet harmony of the whole; They have rent from us the light of our eyes, enforced a company of gueſts worſe then the Ordinaries of *France*, vitiated our wives and daughters before our faces, brought the Crown to greater want then ever by anticipating the revenew: and can the Shepherd be thus ſmitten, and the Sheep not ſcattered? They have introduced a Privie Councel, raviſhing at once the ſphears of all ancient government, impriſoning us without bank or bond: They have taken from us—what ſhall I ſay? (indeed what have they left us?) all means of ſupplying the King, and ingratiating our ſelves with him, taken up the roots of all Propriety, which if it be not ſeaſonably ſet into the ground by his *Majeſtie*'s own hand, we ſhall have inſtead of Beauty, Baldneſſe.

To the making of them whole I ſhall apply my ſelf, and propound a remedy to all theſe diſeaſes. By one and the ſame thing hath King and people been hurt, and by the ſame muſt they be cured; by vindicating---what? new things? no, our ancient, ſober and vitall Liberties; by reinforcing the ancient Laws made by our Auncеſtours; by ſetting ſuch a Character on them, as no licencious ſpirit ſhall dare to enter upon them. And ſhall we think this is a way to break a Parliament? no, our deſires are modeſt and juſt; I ſpeak truly both for the intereſt

intereſt of King and people. If we enjoy not theſe, it will be impoſſible to relieve him: therefore let us never fear that they ſhall not be accepted by his Goodneſſe.

Therefore I ſhall deſcend to my Motion conſiſting of four parts; two of which have relation to our Perſons, two to the propriety of our Goods. For our Perſons, the freedome of them, firſt from impriſonment, ſecondly from imployment abroad, contrary to the ancient Cuſtomes. For our Goods, that no levies may be made but by Parliament: ſecondly, no billetting of ſouldiers.

It is moſt neceſſary that theſe be reſolved, that the Subject may be ſecured in both. For the manner, in the ſecond place, it will be fit to determine it by a *grand Committee*.

The Speech and Argument of Mr. Creſwell *of* Lincolne's Inne, *one of the Members of the* Commons *Houſe of Parliament, concerning the Subjects grievance by the late* Impriſonment *of their perſons without any declaration of the Cauſe.*

I Stand up to ſpeak ſomewhat concerning the point of the Subjects grievance by impriſonment of their perſons without any declaration of the cauſe, contrary unto, and in derogation of the fundamentall Laws and Liberties of this Kingdome.

I think I am one of the *puiſnes* of our profeſſion, which are of the Members of this Houſe; but howſoever ſure I am that in reſpect of my own inabilities I am the *puiſne* of all the whole Houſe: therefore according to the uſuall courſe of Students in our profeſſion, I (as the *puiſne*) ſpeak firſt in time, becauſe I can ſpeak leaſt in matter.

In purſuance of which courſe I ſhall rather put the caſe then argue it: and therefore I ſhall humbly deſire firſt of all, of this honourable Houſe in generall, that the goodneſſe of the cauſe may receive no prejudice by the weakneſſe of my Argument; and next of all, of my Maſters here of the ſame profeſſion in particular, that they by their learned judgements will ſupply the great defects I ſhall diſcover by declaring of my unlearned opinion.

Before I ſpeak of the Queſtion, give me leave, as an entrance thereunto, to ſpeak firſt of the Occaſion.

You ſhall know *Juſtice* is the life and the heart-bloud of the Common-wealth; and if the Common-wealth bleed in the Maſter-vein, all the Balm in *Gilead* is but in vain to preſerve this our body of Policy

from ruine and deſtruction. Juſtice is both *Columna & Corona reipublicæ*, ſhe is both the Column and the Pillar, the Crown and the glorie of the Common-wealth. This is made good in Scripture by the judgement of *Solomon*, the wiſeſt King that ever reigned on earth. For firſt, ſhe is the Pillar; for he ſaith that by Juſtice the Throne ſhall be eſtabliſhed: Secondly, ſhe is the Crown; for he ſaith that by Juſtice a Nation is exalted.

Our Lawes, which are the rules of this Juſtice, they are the *ne plus ultra* to both the King and the Subject: and as they are the *Hercules* Pillar, ſo are they the pillar to every *Hercules*, to every *Prince*, which he muſt not paſſe.

Give me leave to reſemble her to *Nebuchadnezzars* tree: for ſhe is ſo great, that ſhe doth ſhade not onely the Pallace of the King, and the houſe of the Nobles, but doth alſo ſhelter the Cottage of the pooreſt beggar.

Wherefore if either now the blaſts of indignation, or the unreſiſtable violatour of lawes *Neceſsitie* hath ſo bruiſed any of the branches of this Tree, that either our perſons, or goods or poſſeſſions have not the ſame ſhelter as before; yet let us not therefore neglect the Root of this great Tree, but rather with all our poſſible endeavour and unfeigned dutie, both apply freſh and fertile mould unto it, and alſo water it even with our own teares, that ſo theſe bruiſed Branches may be recovered, and the whole Tree again proſper & flouriſh. For this I have learned from an ancient Father of the Church, that though *preces Regum ſunt armatæ*, yet *arma ſubditorum* are but only *preces et lachrymæ*.

I know well that *Cor Regis inſcrutabile*; and that Kings, although they are but men before God, yet are they Gods before men. And therefore to my gratious and dread Soveraigne, (whoſe virtues are true qualities ingenerate both in his judgement and nature) let my arm be cut off, nay, let my ſoul not live that daie, that I ſhall dare to lift up my arm to touch that forbidden fruit, thoſe flowers of his princely Crown and Diadem.

But yet in our *Eden*, in this garden of the Common-wealth, as there are the *flowers of the Sun*, which are ſo glorious that they are to be handled onely by royall *Majeſtie*; ſo are there alſo ſome Daiſies and wholſome herbs, which every common hand that lives and labours in this garden may pick and gather up, and take comfort and repoſe in them. Amongſt all which this *oculus diei*, this *bona libertas* is one, and the cheif one.

Thus much in all humbleneſſe I preſume to ſpeak for the occaſion. I will now deſcend to the Queſtion: wherein I hold, (with all dutifull ſubmiſſion to better Iudgments) that theſe Acts of power in impriſoning and confining of his *Majeſties Subjects* in ſuch manner, without any declaration of the cauſe, are againſt the fundamentall Lawes and Liberties of this Kingdome.

And for theſe reaſons thus briefly drawn, I conclude.

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1. The first from the great favour which the Law doth give unto, and the great care which it hath ever taken of the liberty and safety of this Kingdome.

I should not need to take the question in pieces, nor handle it in parts dividedly, but as one intire, because I hold no other difference between imprisonment and confinement then only this, that one hath a lesse and streighter, the other a greater and larger Prison. And this word Confinement not being to be found in any one case of our law, if therefore it is become the language of State, it is too difficult for me to define.

To proceed therefore in maintenance of my first reason; I find our Law doth so much favour the Subjects liberty of his Person, that the body of a man was not liable to be arrested or imprisoned for any other cause at the Common Law, but for force, and things done against the peace. For the Common Law (being the preserver of the land) so abhorreth force, that those that commit it she accompts her capitall enemies, & therefore did subject their bodies to imprisonment. But by the statute of *Marlebridge Cap.* 24. which was made 35. *Hen.* 3. who was the eighth King from the Conquest, because Bailiffs would not render accounts to their Lords, it was enacted, that their bodies should be attached: And afterwards by the statute 23. *Edw.* 3. 17 who was the 11 King after the Conquest, because men made no Conscience to pay their debts, it was enacted that their bodies should likewise be attached. But before those statutes no mans body was subject to be taken or imprisoned otherwise then as aforesaid. Whereby it is evident how much the Common Law favoured the Liberty of the Subject and protected his body from imprisonment.

I will inforce the reason further by a Rule in Law, and some cases in Law upon that Rule.

The Rule is this, That *Corporalis injuria non recipit æstimationem è futuro*: So as if the question be not for a wrong done to the person, the Law will not compell him to sustain it, and afterwards except a remedy, for the Law holds no damage a sufficient recompence for a wrong which is corporall.

The cases in Law to prove this rule shall be these.

If one menace me in my goods, or that he will burn the evidence of my land, which he hath in his custody, unlesse I make unto him a Bond, there I cannot avoyd the Bond by pleading of this menace. But if he restrains my person, or threatens me with battery, or with burning my house, which is a protection for my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; upon these menaces or dares I shall avoid the bond by plea.

So if a Trespassour drives my beast over another Mans ground, and I pursue to rescue it, there I am a Trespassour to him on whose ground I am. But if a man assault my person, and I for my safety fly over into another man's ground, there I am no Trespassour to him, for

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Quod quis in tuitione ſui corporis fecerit, jure id feciſſe exiſtimatur.
Nay, which is more, the Common Law did favour the Liberty not only of Freemen, but even of the perſons of Bondmen and Villains, who haue no right of propriety either in lands or goods as Freemen have: And therefore by the Law the Lord could not maim his Villain; nay, if the Lord commanded another to beat his Villain, and he did it, the Villain ſhould have his action of Battery againſt him for it.

If the Lord made a Leaſe for yeares to his Villain, if he did plead with his Villain, if he tendred his Villain to be Champion for him in a Writt of Right, any of thoſe acts, and many other, which I omit, were in Law infranchiſements, and made theſe Villains Freemen. Nay in a ſuite brought againſt one, if he by Attorney will pleade that he is a Villain, the Law is ſo carefull of Freedome, that it diſſallowes this plea by Attorny, but he muſt doe it *propria perſona*, becauſe it binds his Poſterity and bloud to the Villains alſo.. And thus much in the generall for my firſt reaſon.

2. My next reaſon is drawn by an Argument *à majori ad minus*: I frame it thus; If the King have no abſolute power over our Lands or Goods, then *à fortiori* not over our Perſons, to impriſon them without declaring the cauſe, for our Perſons are much more worth then either Lands or Goods; which is proved by what I have ſaid already, and *Chriſt* himſelf makes it clear where he ſaith, *An non eſt corpus ſupra veſtimentum*, Is not the Body more worth then Raiment? where the *Canoniſts* ſay that *Veſtimentum* comprehendeth all outward things which are not in the ſame degree with that which is corporall. And our Law maketh it alſo plain; for if a Villain purchaſe Frank-land, this maketh it Villain-land according to the nature of his perſon; but it holds not *è converſo*, Frank-land ſhall not free the perſon. Now that the King hath no abſolute power either over our Lands or Goods, I will onely at this time but put a caſe or two: for without proof of the Premiſſes my Concluſion would not follow.

Firſt for Land; The King cannot by his Letters pattents make the ſon of an Alien heir to his father, nor to any other, for he cannot diſinherit the right heir, ſaith the book, nor do no prejudice to the Lord of his Eſcheat. The King by his Prerogative ſhall pay no toll for things bought in Fairs and Markets: but a cuſtome for paying toll to go over the ſoil and free-holds of another ſhall bind the King, for this toucheth the inheritance of the Subject; and therefore the King ſhall not have ſo much as a way over his lands without paying; and if not a way, then certainly not the land it ſelf.

Next for Goods; If a man hath a Jewell in gage for ten pound, &c. and is attainted for Treaſon, the King ſhall not have this Jewell, if he payes not the ten pound. So if Cattel be diſtreined, and the owner of them afterwards be attainted, yet the King ſhall not have them untill he have ſatisfied that for which they were diſtreined. And if in

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theſe Caſes, where the owners of the goods are ſuch capitall offendours, the King cannot have them; much leſſe ſhall he have them when the owner is innocent, and no offendour.

Nay, I may well ſay that almoſt every leaf and page of all the volumes of our Common Law prove this right of propriety, this diſtinction of *meum* and *tuum* aſwell between King and Subject, as one Subject and another: and therefore my Concluſion follows, that if the Prerogative extend not neither to Lands nor to Goods, then *à fortiori* not to the Perſon, which is more worth then either lands or goods, as I ſaid. And yet I agree that by the very law of Nature ſervice of the Perſon of the Subject is due to his Soveraigne; but this muſt be in ſuch things which are not againſt the law of Nature: but to have the body impriſoned without any cauſe declared, and ſo to become in bondage, I am ſure is contrary unto and againſt the law of Nature, and therefore not to be inforced by the Soveraigne upon his Subjects.

3. My next reaſon is drawn *ab inutili & incommodo*. For the Statute *de frangentibus priſonam* made 1 *E.*2.is, *quod nullus qui priſonam fregerit, ſubeat judicium vitæ vel membrorum pro fractione priſonæ tantum, niſi cauſa pro qua captus impriſonetur tale Iudicium requirat.* Whence this Concluſion is clearly gathered, That if a man be committed to priſon without declaring what cauſe, and then if either Malefactour do break the priſon, or the Gaoler ſuffer him to eſcape, albeit the priſoner ſo eſcaping had committed *Crimen læſæ majeſtatis*, yet neither the Gaoler nor any other that procured his eſcape, by the Law ſuffer any corporall puniſhment for ſetting him at large; which, if admitted, might prove in conſequence a matter of great danger to the Commonwealth.

4. My next reaſon is drawn *ab Regis honore*, from that great honour the Law doth attribute unto ſoveraigne Majeſty: and therefore the Rule of Law is, that *Solum Rex hoc non poteſt facere, quod non poteſt juſte agere.* And therefore if a Subject hath the donation, and the King the preſentation to a Church, whereunto the King preſents without the Subjects nomination, here the *quare impedit* lies againſt the Incumbent, and the King is in Law no diſturber.

And *Huſſey* chief Juſtice in 1 *H.*7. *fol.* 4. ſaith that Sir *Iohn Markham* told King *Edw.* 4. he could not arreſt a man either for treaſon or fellony, as a Subject might, becauſe that if the King did wrong, the party could not have his Action againſt him.

What is the reaſon that an Action of falſe impriſonment lies againſt the Sheriff, if he doth not return the Kings Writ, by which he hath taken the body of the Subject, but this, becauſe the Writ doth *breviter enarrare cauſam captionis*, (which if it doth not, it ſhall abate, and is void in Law) and being returned, the party when he appears may know what to anſwer, and the Court upon what to judge? And if the Kings Writ under his great Seal cannot impriſon the Subject, unleſſe it con-

tains the cauſe, ſhall then the Kings warrant otherwiſe doe it without containing the cauſe, that his Judges upon return thereof may likewiſe judge of the ſame either to remain, or judge the partie impriſoned?

I ſhould argue this point more cloſely upon the ſtatute of *Magna Charta* 29. *quod nullus liber homo impriſonetur*; the ſtatute of *Weſt.* 1. *cap.* 15. for letting perſons to bail; and the Judgements lately given in the *Kings Bench*: but the later of theſe ſtatutes referring having been by that honourable Gent. (to whom the Profeſſours of the Law both in this and all ſucceding ages, are, and will be much bound) already expounded unto us, and that alſo fortified by thoſe many contemporary Expoſitions and Judgements by him learnedly cited, and there being many learned Lawyers here, whoſe time I will not waſte, who were preſent, and ſome of them perhaps of councell in the late Cauſe adjudged in the *Kings Bench*, where you (to whoſe perſon I now ſpeak) do well know I was abſent, being then of councel in a cauſe in another Court, and my practice being in the Country, farre remote from the treaſure of Antiquity, and Records conducing to the clearing of this point; Therefore the narrowneſs of my underſtanding commends unto me ſober ignorance, rather then preſumptuous knowledge, and alſo commands me no further to trouble your Patience.

But I will conclude with that which I find reported of Sir *Iohn Davis*, who was the Kings Serjeant, and ſo, by the duty of his place, would no doubt maintain to his uttermoſt the Prerogatives of the King his royall Maſter; and yet it was by him thus ſaid in thoſe Reports of his upon the caſe of Taviſtry Cuſtoms, That the Kings of *England* alwayes have had a Monarchy Royall and not a Monarchy Seignorall: where under the firſt (ſaith he) the Subjects are Free-men, and have propriety in their goods, and free-hold, and inheritance in their Lands; but under the later they are as Villains and Slaves, and have proprietie in nothing. And therefore (ſaith he) when a Royall Monarch makes a new Conqueſt, yet if he receives any of his Nations ancient Inhabitants into his protection, they and their heirs after them ſhall enjoy their Lands and Liberties according to the Law. And there he voucheth this Preſident and Judgement following given before *William* the *Conquerour* himſelf, viz.

That one *Sherborn*, at the time of the Conqueſt being owner of a Caſtle and lands in *Norfolk*, the *Conquerour* gave the ſame to one *Warren* a *Norman*; and *Sherborn* dying, the Heir clayming the ſame by deſcent according to the Law, it was before the *Conquerour* himſelf adjudged for the Heir, and that the gift thereof by the *Conquerour* was void.

If then it were thus in the *Conquerour*'s time, & by his own ſentence and judgement, and hath ſo continued in all the ſucceſſions of our Kings ever ſince, what doubt need we have, but that his moſt excellent *Majeſtie* upon our humble petition proſtrated at his feet, (which, as was well ſaid, is the beſt paſſage to his heart) will vouchſafe unto

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us our ancient Liberties and Birthrights, with a through reformation of this and other juſt grievances. And ſo I humbly crave pardon of this honourable Houſe, that I have made a ſhort Leſſon long.

Sir Benjamin Ruddier's *Speech*, *March* 22. 1627.

Mr. *Speaker*,

OF the miſchiefs that have lately fallen upon us by the late diſtractions, here is every man ſenſible: and that may enſue the like (which God forbid) we may eaſily ſee, and too late repent. The eyes of *Chriſtendome* are upon us; and as we ſpeed here, ſo go the Fortunes of our ſelves, our Friends, and of our Religion. That the Dangers were not reall, but pretended, we all heartily wiſh, but feel the contrary. That diviſions have weakned our party, and our attempts; united the two greateſt Princes of *Chriſtendome* againſt us, whom we have provoked. That the State is deſperately diſeaſed, and this *Parliament* the way that it may yet be recovered, if ſoveraigne and proper remedies be ſpeedily applyed:

1. To truſt the *King*, whoſe Kingly nature is to yield: it prevails.
2. To ſupply the King, and that without condition, which is fewel of Jealouſie.
3. To preſent our grievances to his *Majeſty*, perſonall and reall, humbly, moderately, and briefly.
4. To do all this ſpeedily and in order, whereby the King may be ſtrengthened, the Kingdome recovered, our Allies relieved, and the Laws and Liberties of the Subject preſerved in a legall propriety; for he that is not maſter of his goods, dwells not at home.

Sir Robert Philips *his Speech, March* 22. 1627.

Mr. *Speaker*,

I Reade of a cuſtome amongſt the old *Romans*, that once every year they had a ſolemn Feaſt for their *Slaves*, at which they had liberty without exception to ſpeak what they would (thereby to eaſe their afflicted minds) which being finiſhed, they ſeverally returned to their former Servitude.

This may, with ſome reſemblance and diſtinction, well ſet forth our preſent ſtate, where now, after the revolution of ſome time, and grievous ſufferance of many violent oppreſſions, we have (as thoſe Slaves had) a day of liberty of ſpeech, but ſhall not (I truſt) be hereafter ſlaves, for we are free: yet what new illegall proceedings our ſtates and perſons have ſuffered under, my heart yearns to think, my tongue falters to utter. They have been well repreſented by divers worthy Gentlemen before me; yet one, and the maine (as I conceive) hath not been touched, which is our *Religion*: Religion, Mr. *Speaker*, made vendible by Commiſſion, and men for pecuniary annuall rates diſpenced withall, whereby Papiſts may without feare of Law practice Idolatry.

For the Oppreſſions under which we grone, I draw them into two heads: Acts of Power againſt Law, and Judgements of Law againſt our Liberty.

Of the firſt ſort are, ſtrange inſtructions, violent exactions of money thereupon, impriſonment of the perſons of ſuch who (to deliver over to poſteritie the liberty they have received from their Fore-fathers, and lawfully were in poſſeſſion of) refuſed ſo to lend; and this aggravated by reaſon of the remedileſſe continuance and length thereof: and chiefly the ſtrange, vaſt, and unlimited power of our Lieutenants and their Deputies, in billetting of Souldiers, in making rates, in granting warrants for taxes as their diſcretions ſhall guide them; and all againſt the Law.

Theſe laſt are the moſt inſupportable burthens that at this preſent afflict our poor Country, and the moſt cruel oppreſſion that ever yet the Kingdome of *England* endured. Theſe upſtart Lieutenants (of whom perhaps in ſome caſes and times there may be good uſe, being regulated by Law) are the worſt of grievances, and the moſt forward and zealous executioners of thoſe violent and unlawfull courſes which have been commended unto them. Of whoſe proceedings, and for the qualifying of whoſe unruly power, it is more then time to conſult and determine.

Judgements of Law againſt our Liberty have been three, each latter ſtepping forwarder then the former upon the right of the Subject, aiming in the end to tread and trample under foot our Law, and that in the form of Law.

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The firſt was the Judgement of the *Poſt-nati*, whereby a Nation, which I heartily love for their ſingular zeal in our Religion, and their ſpirit to preſerve our Liberties far beyond many of us, is made capable in any the like favours, priviledges and immunities as our ſelves enjoy; and this ſpecially argued in the *Exchequer Chamber* by all the Judges of *England*. The ſecond was the Judgement upon the impoſitions in the *Exchequer* Court by the Barons, which hath been the ſource and fountain of many bitter waters of affliction unto our Merchants. The third was that fatall late Judgement againſt the Liberty of the Subject impriſoned by the King, argued and pronounced but by one alone.

I can live although another without title be put to live with me; nay, I can live although I pay exciſes and impoſitions more then I doe: but to have my Liberty, which is the ſoul of my life, taken from me by power, and to have my body pent up in a gaole without remedy by Law, and to be ſo adjudged, Oh improvident Anceſtors! Oh unwiſe Fore-fathers! to be ſo curious in providing for the quiet poſſeſſion of our Laws, and the Liberties of Parliament, and to neglect our Perſons and Bodies, and to let them ly in priſon, and that *durante beneplacito*, remedileſſe. If this be Law, what do we talk of Liberties? why do we trouble our ſelves with the diſpute of Law, franchiſes, propriety of goods, and the like? What may any man call his, if not Liberty?

I am weary in treading theſe waies, and conclude to have a ſelect Committee deputed to frame a Petition to his *Majeſtie* for redreſs of theſe things; which being read, examined and approved by the Houſe, may be delivered to the King; of whoſe gracious anſwer we have no cauſe to doubt, our deſires being ſo reaſonable, our intentions ſo loyall, and the manner ſo humble. Neither need we feare this to be the *Critical Parliament* (as was inſinuated) or this a way to diſtraction; but aſſure our ſelves of a happie iſſue. Then ſhall the King (as he calls us his great Councell) find us his true Councell, and owne us his good Councell. Which God grant, &c.

Sir Thomas Edmonds, *March* 22. 1627.

THe King congratulating this preſent *Parliament*, he prays for a bleſſed ſupply, he aſſures us of his gracious inclination towards us; and of the conſequence of this meeting, doth intimate how much the ſafety of our ſelves and Confederates abroad depends upon the good ſucceſſe thereof: and he wiſheth a generall oblivion of things that are paſt, leaſt they cauſe diſtractions anew, without a primary and free Supply to his *Majeſtie*.

Sir John Elliot, *March* 22. 1627.

SIr *John Elliot* did paſſionately and rhetorically ſet forth our late Grievances; he miſliked much and vehemently the violating of our Laws, urged many good arguments for our propugning them, and concluded (with Sir *Francis Seymour*) for a Committee.

Sir Humfrey Maye, *March* 22. 1627.

LEt us take heed of diſtracting the King, who is young and vigorous, full of ſpirit and courage, and may be wone to our devices by our complying, and alleadging all theſe illegall proceedings were actions of Neceſſity, and the like, with other things by way of excuſe.

The

The Petition for the Faſt, March 26. 1628.

Moſt Gracious Soveraigne,

WE your *Majeſtie's* moſt humble and loyall Subjects, the Lords Spirituall and Temporall and Commons in this preſent *Parliament* aſſembled, upon a tender and paſſionate ſenſe of the extream Calamities of the Reformed *Churches* abroad, and with much ſorrow apprehending the heavy diſpleaſure of almighty God declared againſt our ſelves, in the manifold Evils already fallen upon us, and in thoſe which are further threatned (as by your ſacred *Majeſty* was intimated to us) even to the utter deſtruction and ſubverſion of this Church and State (all which our ſins have juſtly deſerved) and being now by your *Majeſtie's* gracious favour aſſembled in Parliament as the great Councel of this your Kingdome, to conſult on ſuch means as we conceive fitteſt to redreſſe the preſent, and prevent the future Evils; (wherein, through Gods bleſſing, we intend to imploy our utmoſt endeavours, with as good hearts to your *Majeſtie* and the publick ſervice as ever people did) do in the firſt place humbly beſeech your *Majeſty*, that by your ſpeciall command, one or more daies may be forthwith ſolemnly ſet apart, wherein both our ſelves and this your Kingdome may by Faſting and Prayer ſeek a Reconciliation at the hands of almighty God, and with humble and penitent hearts beſeech him to remove thoſe miſeries that lie upon us and our neighbour Churches, to avert thoſe which are threatned, to continue the favours which we yet enjoy, and particularly to beſtow his abundant bleſſing upon your *Majeſty* and this preſent *Parliament*; ſo that all our counſels and conſultations being bleſſed with his divine aſſiſtance, may produce much honour, ſafety and happineſſe to your *Majeſty*, your People, and Allyes.

The

The Kings Propoſitions, March 28. 1628.

1. TO furniſh, man and victuall 30. ſhips, to guard the Narrow ſeas and along the Coaſts.

2. To ſet out 10. other ſhips for the preſervation of the *Elve* and the *Baltick* ſea.

3. To ſet out 10. other ſhips for the relief of the Town of *Rochel*.

4. To leavy, arme, cloth, victuall, pay and tranſport an army of 1000. horſe and 10000. foot for forrain ſervice.

5. To pay and ſupply 6000. men for the aſſiſtance of the King of *Denmark*.

6. To ſupply the ſtores of the Office of the Ordinance.

7. To ſupply the ſtores of the Navy.

8. To build 20. ſhips yearly for the increaſe of the Navy.

9. To repair the Forts within the Land.

10. To pay the Arriers of the Office of the Ordinance.

11. To pay the Arriers of the Victuallers Office.

12. To pay the Arriers of the Treaſurer of the Navy.

13. To pay the Arriers due for the fraight of divers Merchants ſhips imployed in his *Majeſtie's* ſervice.

14. To provide a Magazine of Victualls for Land and Sea-ſervice.

Three grand Queſtions.

1. NO Free-man ought to be committed, or detained in priſon, or otherwiſe reſtrained, by the command of the King, of the Privy Councel, or any elſe, unleſſe ſome cauſe of the commitment, detainment, or reſtraint be expreſſed, for which by law he ought to be committed, detained, or reſtrained.

2. A Writ of *habeas corpus* may not be denyed, but ought to be granted to every man that is committed, or detained in priſon, or otherwiſe reſtrained, though it be by the command of the King, Privy Councel, or any other, he praying the ſame.

3. If a Free-man be committed, or detained in priſon, or otherwiſe reſtrained by the command of the King, Privy Councel, or any other, unleſſe the cauſe of the commitment, detainment, or reſtraint be expreſſed, for which by Law he ought to be committed, detained or reſtrained, and the ſame be returned upon *habeas corpus* granted for the ſaid party, that then he ought to be delivered, or bailed.

Sir

Sir John Coke *his Speech at a Conference between the* Lords *and* Commons *about the Petition to the King againſt* Recuſants.

My *Lords*,

WE are ſent to attend this Conference from the Knights, Citizens and Burgeſſes of the Houſe of Commons. And firſt we acknowledge all due honour both unto the reverend Fathers of the Church, and to you, noble Lords, in that ye have ſhined before us as worthy lights in the encouragement and maintainance of true Religion. It is the true ſupport of all your dignities and honours. And this forwardneſſe of yours is the more remarkable, when that viperous generation (as your Lordſhips juſtly ſtile them) doe at eaſe with tooth and nail aſſay to rend the bowels of their Mother. For give me leave to tell you what I know, that they now both vaunt at home, and write to their friends abroad, they hope all will be well, and doubt not to prevail, and to win ground upon us.

And a little to awake the zeal and care of our learned and grave *Fathers*, it is fit that they take notice of that *Hierarchie* which is already eſtabliſhed in competition with their Lordſhips: for they have a Biſhop conſecrated by the *Pope*; this Biſhop hath his ſubalternate Officers of all kinds, as Vicars-generall, Arch-deacons, rurall Deans, Apparatours, and ſuch like. Neither are thoſe nominall or titular Officers alone, but they all execute their Juriſdictions, and make their ordinary Viſitations through the Kingdome, keep Courts, and determine Eccleſiaſticall cauſes, and (which is an argument of more conſequence) they keep ordinary intelligence by their Agents in *Rome*, and hold correſpondence with the *Nuntioes* and *Cardinalls* both at *Bruxells* and in *France*.

Neither are the Seculars alone grown to this height, but the *Regulars* are more active and dangerous, and have taken deep root; they have already planted their Societies and Colledges of both Sexes, they have ſetled Revenues, Houſes, Libraries, Veſtments, and all other neceſſary proviſions to travell or ſtay at home; nay, even at this time they intend to hold a concurrent Aſſembly with this Parliament.

But now ſince his ſacred *Majeſty* hath extended his royall arm, and ſince the Lords of his Councell have by their authority cauſed this neſt of Waſps to be digged out of the earth, and their Convocations to be ſcattered, and ſince your Lordſhips joyn in courage and reſolution, at leaſt to reduce this People to their lawfull reſtraint, that they may doe no more hurt; we conceive great hope and comfort, that the almighty God will from henceforth proſper our endeavours both at home and abroad.

But now, my Lords, to come to the chief errand of this our meeting, which is to make known to you the approbation of our Houſe of that Petition to his *Majeſty*, wherein you were pleaſed to requeſt our concurrence.

The Houſe hath taken it into ſerious conſideration, and from the beginning to the end approve of every word, and much commend your happy pen: onely we are required to preſent unto you a few additions, whereby we conceive the Petition may be made more agreable to the Statutes, which are deſired to be put in execution, and to a former Petition granted by his *Majeſty*, recorded in both Houſes, confirmed under the Broad Seal of *England*, and publiſhed in all the Courts of our ordinary Juſtice. But theſe things we propound not as our Reſolutions, or as matters to raiſe debate or diſpute, but commend them only as our Adviſe and deſire; being ready notwithſtanding to joyn with your Lordſhips in the Petition as now it is, if your Lordſhips ſhall not find this reaſon to be of weight.

Theſe additions were but few, and were approved of by the Lords, and inſerted in the Petition the 29. *March* 1628.

The Petition of both Houſes to his Majeſty *concerning* Recuſants, *March* 31. 1628.

VVE your *Majeſties* moſt loyall and obedient Subjects, the Lords Spirituall and Temporall and Commons in Parliament aſſembled, having to our ſingular comfort obtained your *Majeſties* pious and gracious aſſent for a publick Faſt, to appeaſe the wrath of almighty God kindled againſt us, and to prevent thoſe grievous Judgements which doe apparently preſſe upon us; doe in all humility preſent unto your Sacred *Majeſty* all poſſible thanks for the ſame.

And becauſe the publick and viſible Sins of the Kingdome are the undoubted Cauſes of thoſe viſible Evils that are fallen upon us, amongſt which ſins (as is apparent by the Word of God) Idolatry and Superſtition are the moſt hainous and crying ſins; to the end that we may conſtantly hope for the bleſſing of God to deſcend upon this our publick Humiliation, by abandoning thoſe ſins which doe make a wall of ſeparation betwixt God and us,

1. We moſt humbly and ardently beg at the hands of your Sacred *Majeſty*, that your *Majeſty* will be pleaſed to give continuall life and motion to all thoſe Laws that ſtand in force againſt *Ieſuites*, *Seminary Prieſts*, and all that have taken Orders by authority of the See of *Rome*, by exacting a more due and ſerious execution of the ſame: amongſt which number, thoſe that have highly abuſed your *Majeſties* Clemency, by returning

returning into the Kingdome after their Baniſhment, contrary to your Highneſſe expreſſe Proclamation, we humbly deſire may be left to the ſeverity of your Laws, without admitting any mediation or interceſſion for them; and that ſuch of your *Majeſties* unſound and ill-affected Subjects as doe receive, harbour or conceal any of that viperous generation, may without delaies ſuffer ſuch penalties and puniſhments as the Laws moſt juſtly impoſe upon them.

2. That your *Majeſty* would be pleaſed to command a ſecure and ſtreight watch to be kept in and over your *Majeſties* Ports and Havens, and to commit the care and charge of ſearching of ſhips for this diſcovery, and apprehenſion as well of *Jeſuits* and *Seminary Prieſts* brought in, as of children and young Students ſent over beyond the Seas, to ſuck in the poiſon of Rebellion aud Superſtition, unto men of approved Fidelity and Religion; and ſuch as ſhall be convicted to have connived or combined in the bringing in of the one, or conveying out of the other, that the Lawes may paſſe upon them with ſpeedy execution.

3. That conſidering thoſe dreadfull dangers (never to be forgotten) which did involve your *Majeſties* Sacred Perſon, and the whole repreſentative Body of your *Majeſties* Kingdome, plotted and framed by the free and common acceſſe of Popiſh *Recuſants* to the city of *London*, and to your *Majeſties* Court, your *Majeſty* would be graciouſly pleaſed to give ſpeedy command for the preſent putting in practice thoſe Laws that prohibite all Popiſh *Recuſants* to come to the Court, or within ten miles of the City of *London*, as alſo thoſe Law that confine them to the diſtance of five miles from their dwelling houſes; and that ſuch by-paſt licenſes, not warranted by law, as have been granted unto them for their repair to the city of *London*, may be diſcharged and annulled.

4. That whereas it is more then probably conceived, that infinite ſummes of money have within theſe two or three yeares laſt paſt been exacted out of the *Recuſants* within the Kingdome, by colour of Compoſition, and ſmall proportion of the ſame returned into your *Majeſties* Coffers, not onely to the ſuddain inriching of private perſons, but alſo to the imboldning of the *Romiſh Recuſants* to entertain Maſſing Prieſts into their private houſes, and to exerciſe all the mimick Rites of their groſſe Superſtition without fear of controll, amounting (as by their daily practice and oſtentation we may conceive) to the nature of a concealed Toleration; your *Majeſty* would be graciouſly pleaſed to receive this particular more nearly into your Princely wiſdome and conſideration, to diſſolve this Myſtery of Iniquity, patch't up of colourable Licenſes, Contracts or Preconveyances, being but masks on the one part of fraud to deceive your *Majeſty*, and ſtales on the other ſide for private men to accompliſh their corrupt ends.

5. That as the perſons of Ambaſſadours from forraigne Princes & their houſes be free for exerciſe of their own Religion; ſo their houſes

may not be made free Chappells and Sanctuaries for your *Majeſties* Subjects Popiſhly affected to heare Maſſe, and to participate in all other Rites and Ceremonies of that Superſtition, to the great offence of almighty God, and ſcandall of your *Majeſties* people loyally and religiouſly affected; That either the concourſe of Recuſants to ſuch places may be reſtrained, or at leaſt ſuch a vigilant watch ſet upon them at their returne from thoſe places, as they may be apprehended, and ſeverely proceeded withall, *ut qui palam in luce peccant, in luce puniantur.*

6. That no place of authority or command within any the Counties of this your *Majeſties* Kingdome, or in any ſhips of your *Majeſties*, or which ſhall be imployed in your ſervice, be committed to Popiſh *Recuſants*, or to *Non-communicants* by the ſpace of a year paſt, or to any ſuch perſons as, according to direction of former Acts of State, are juſtly to be ſuſpected; as the place and authority of Lords Lieutenants, Deputy Lieutenants, Juſtices of Peace, of Captains, or other Officers or Miniſters mentioned in the Statute made in the third year of the reign of your Father of bleſſed memory: and that ſuch as by connivance have crept into ſuch places, may by your *Majeſties* royall Command be diſcharged of the ſame.

7. That all your *Majeſties* Juſtices, Judges, and Miniſters of Juſtice, unto whoſe care and truſt Execution, which is the life of your *Majeſties* Laws, is committed, may by your *Majeſties* Proclamation not only be commanded to put in ſpeedy execution thoſe Laws that ſtand in force againſt *Jeſuits, Prieſts, Seminaries*, and Popiſh *Recuſants*; but that your *Majeſty* would be further pleaſed to command the ſaid Judges and Juſtices of Aſſize, to give a true and ſtrict accompt of their proceedings at their return out of their Circuits, to the Lord Keeper, and by the Lord Keeper to be preſented to your *Majeſty*.

8 And for a fair and clear eradication of all Popery for the future, and for the breeding and nurſing up of an holy generation, and a peculiar people ſanctified to the true worſhip of almighty God, That untill a proviſionall Law may be made, for the trayning and educating of the Children of Popiſh *Recuſants* in the grounds and principles of our holy Religion, (which we conceive will be of more power and force to unite your people unto your *Majeſty* in faſtneſſe of Love, Religion, and loyall Obedience, then all pecuniary mulcts and penalties that can poſſibly be deviſed) your *Majeſty* will be pleaſed to take it into your Princely care and conſideration.

Theſe our humble Petitions, proceeding from hearts and affections loyally and religiouſly devoted to God, and your *Majeſties* ſervice, and to the ſafety of your *Majeſties* Sacred Perſon, we moſt zealouſly preſent to your Princely Wiſdome, craving your *Majeſties* chearful and gracious approbation.

The

The King's Anſwer to the Petition againſt *Recuſants*, March 31. 1628.

My Lords *and* Gentlemen,

I Do very well approve the method of your proceeding, à Jove principium, *hoping that the reſt of your Conſultations will ſucceed the happier. And I like the preamble of my Lord Keeper, otherwiſe I ſhould a little have ſuſpected that you thought me not ſo carefull of Religion as I have been and ever ſhall be, wherein I am as forward as you can deſire.*

As for the Petition, I anſwere, firſt in generall; that I like it well, and will uſe thoſe, as well as all other means, for the maintenance and propagation of that Religion wherein I have lived, and doe reſolve to die. But for the particulars, you ſhall receive a more full anſwer hereafter.

And now I will only add this, that as we pray to God to help us, ſo we muſt help our ſelves; for we can have no aſſurance of his aſſiſtance, if we do ly in bed and only pray, without uſing other means. And therefore I muſt remember you that if we do not make proviſion ſpeedily, we ſhall not be able to put one Ship to ſea this year.

Verbum ſapienti ſatis eſt.

The Anſwer to the ſame Petition by the Lord Keeper Coventrey.

TO the firſt point his *Majeſty* anſwereth, That he will accoreding to your deſire give both life and motion to the Laws that ſtand in force againſt *Ieſuits*, *Seminary Prieſts*, and all that have taken Orders by authority of the Sea of *Rome*: and to that end his *Majeſty* will give ſtrict order to all his Miniſters for the diſcovering and apprehending of them, and ſo leave them being apprehended to the triall of the Law; and in caſe after tryall there ſhall be cauſe to reſpite the execution of any of them, yet they ſhall be committed, according to the example of beſt times, to the Caſtle of *Weſtbitch*, and there be ſafely kept from exerciſing their functions, or ſpreading their Superſtitious and dangerous Doctrine: and for the receivers and abettors they ſhall be left to the Law.

To the ſecond, His *Majeſty* granteth all that is deſired in this Article, and to this end will give order to the Lord Treaſurer, Lord high Admirall, and Lord Warden of the Cinque Ports, that in their ſeverall places they be carefull to ſee this Article fully executed, giving ſtrict charge to all ſuch as have place or authority under them, to uſe all diligence herein: and his *Majeſty* requireth them, and all other his Officers and Miniſters, to have a vigilant eye upon ſuch as dwell in dangerous places of advantage or opportunity for receiving or tranſporting any ſuch as are here mentioned: and his *Majeſty* will take it for good ſervice, if any will give knowledge of ſuch as have connived or combined, or ſhall connive or combine, as is mentioned in this Article, that Juſtice may be ſtrictly done upon them.

To the third, His *Majeſty* will take order to reſtrain the recourſe of *Recuſants* to the Court; and alſo for the other points of this Article, his *Majeſty* is well pleaſed that the Laws be duly executed, and that all unlawfull Licenſes be annulled and diſcharged.

To the fourth, His *Majeſty* is moſt willing to puniſh for the time paſt, and prevent for the future any the deceits and abuſes mentioned in this Article, and will account it a good ſervice in any that will inform himſelf, his Privy Councell, Officers of his Revenue, Judges, or Councell learned, of any thing that may reveal this Myſtery of Iniquity: and his *Majeſty* doth ſtrictly charge and command every of them to whom ſuch information is made, that they ſuffer not the ſame to die, but do their utmoſt endeavour to effect a clear diſcovery, and bring the Offenders to puniſhment: and to the intent that no concealed toleration may be effected, his *Majeſty* leaveth the Lawes to their courſe.

To the fifth, His *Majeſty* is pleaſed to prohibite and reſtrain the coming and reſort to the houſe of Ambaſſadours, and will command a vigilant watch to be ſet for their taking and puniſhing as is deſired.

To the ſixth, He is perſwaded that this Article is already obſerved with

with good care; nevertheleſſe for the avoyding as much as may be errours and eſcapes in that kind, his *Majeſty* will give order to the Lord Keeper, that the next Terme he call unto him all the Judges, and take information from them of the ſtate of their ſeverall Circuits; if any ſuch as are mentioned in this Article be in the Commiſſion for Peace, that reformation may be made thereof: and will likewiſe give order to the Lord Admirall, and to ſuch perſons to whom it ſhall appertain, to make diligent enquiry, and certifie to his *Majeſty* if any ſuch be in place of authority and command in his ſhips or ſervice.

To the ſeventh, His *Majeſty* doth fully grant it.

To the eighth, His *Majeſty* doth well approve it as a matter of neceſſary conſideration; and the Parliament now ſitting, he recommendeth to both Houſes the preparation of a fitting Law to that effect: and his *Majeſty* doth further declare, that the mildneſſe that hath been uſed towards them of the Popiſh Religion, hath been upon hope that forraign Princes thereby might be induced to uſe moderation towards their Subjects of the Reformed Religion; but not finding that good effect which was expected, his *Majeſty* reſolveth (unleſſe he ſhall very ſpeedily ſee better fruit) to adde a further degree of ſeverity to that which is in this Petition deſired.

Sir Edward Coke's *Speech, March 25. upon a Queſtion of Law in point of the Judgement given in the* Kings Bench Mich. 3. Caroli, Viz. *That a Priſoner detained by Committment* per ſpecial. mandat. Regis, *without expreſsing a Cauſe, is not bailable; wherein he held negatively, and ſpake as followeth.*

IT is true that the Kings *Prerogative* is a part of the Law of this Kingdome, and a ſupream part, for the *Prerogative* is highly tendred and reſpected of the Law; yet it hath bounds ſet unto it by the Laws of *England*. But ſome worthy Members of this Houſe have ſpoken of forraign States, which I conceive to be a forraign Speech, and not able to weaken the Side I ſhall maintain.

That Maſter *Attorney* may have ſomething to anſwer unto, I will ſpeak without taking another day to the body of the Cauſe, yet keeping ſomething in ſtore for another time. I have not my *Vade mecum* here, yet I will endeavour to recite my Anceſtours truly. I ſhall begin with old Authority, for *Errorem ad ſua principia referre, eſt reſellere.*

The ground of this Errour was the Statute of *Weſtm.* 1 *cap.* 15. which ſaith, that thoſe are not repleviable who are committed for the death

death of a man, or by the commandment of the King or his Juſtices for the Forreſt (for ſo it was cited;) and *Stamford* 72. expounding hereof, the commandment of the King to be the commandment of the Kings mouth, or of his Councell: But it is clear that by *præceptum* is underſtood the commandment of the Juſtices of the *Kings Bench* and *Common Pleas*; and this is *contemporanea expoſitio, quæ eſt fortiſſima in lege.*

To this purpoſe *vide Weſtm.* 1. *cap.* 9. the book of 2. *R.* 2. *item cap.* 20. *de malefactoribus in parc.* the book of 8 *Hen.* 4. 5. *item* 25. 26. 29. *cap. ejuſdem ſtatuti.* whereby it may appear that the commandment here ſpoken of to be the commandment of the King, is his commandment by his Judges, *Præceptum Domini Regis in Curia, non in Camera.* So it is likewiſe taken 1. *R.* 2. *cap.* 12. in a Statute made in the next Kings reign, and expreſly in *Dyer fol.* 162. §. 50. & *fol.* 192. §. 24. Shall I further prove it by matter of record? *Fac hoc & vives.* it is 18. *E.* 3. *Rot.* 33. *coram Rege, Iohn Bilſton's* Caſe; who being committed and detained in priſon by commandment of the King, was diſcharged by *Habeas corpus, eo quod Breve Domini Regis non fuit ſufficiens cauſa.*

All the Acts of Parliament in title of accuſation are direct to the point, and alſo the 16. *Hen.* 6. *Brooke and Littleton*, 2. 1. *monſtrans de fait* 182 *per Cur.* The King cannot command a man to be arreſted in his preſence: the King can arreſt no man, becauſe there is no remedy againſt him. 1. *Hen.* 7. 4. likewiſe *prædict. ſtat. cap.* 18. the Kings pleaſure is not binding without the aſſent of the Realm.

I never read any opinion againſt what I have ſaid, but that of *Stamford*, miſtaken (as you ſee) in the ground: yet I ſay not that a man may not be committed without preciſe ſhewing the cauſe in particular; for it is ſufficient if the cauſe in generall be ſhewed, as for Treaſon, &c. 1. *E.* 2. *ſtat. de frangend. priſon. nullus habeat judicium,* &c. there the cauſe of impriſonment muſt be known, elſe the Statute will be of little force; the words thereof doe plainly demonſtrate the intent of the Statute to be accordingly.

I will conclude with the higheſt authority, that is, 25. chap. of the *Acts* of the Apoſtles, the laſt verſe, where Saint *Paul* ſaith, *It is againſt reaſon to ſend a man to priſon without ſhewing a Cauſe.*

Thus, Maſter *Attorney*, according to the rules of Phyſick, I have given you a Preparative, which doth precede a Purge. I have much more in ſtore.

The

The ſubſtance of the King's *Speech, upon the relating of the proceedings of the Parliament to him by the Counſellers of the Commons Houſe of Parliament*, 4. April. 1628.

HIs *Majeſtie* upon the Report made expreſſed great contentment that it gave him, not valuing the money given comparable to the hearts ſhewed in the way of the gift: for although his great Occaſions of State did require more money then at this time was given; yet now he made account he could not lack, ſince he had their loves, and that this day he thought he had gained more reputation in Chriſtendome, then if he had won many battails: ſaying further (according to his Speech the firſt day of the Parliament, that they might eaſily make him in love with Parliaments) now he profeſſed he was ſo, and that we ſhould find the fruits of it by his calling us often together. And to ſecure further feares, and create future confidence, he aſſureth us that we ſhall enjoy as great immunity and freedome in his time, as ever we poſſeſſed or had under the reigne of any the beſt Kings of this Realm.

The Duke of Buckingham's *Speech to his* Majeſtie *on Friday, being the* 4. *of* April. 1628.

Sir,

MEthinks I now behold you a great King; for love is greater then Majeſtie. Opinion that your people loved you not, had almoſt loſt you in the opinion of the World: but this day makes you appear, as you are, a glorious King, loved at home, and now to be feared abroad.

This falling out ſo happily, I beſeech you give me leave to be an humble Suitour unto your *Majeſtie*, Firſt for my ſelf, that *I*, who have had the honour to be your Favourite, may now give up my title unto them, they to be your Favourite, and I to be your Servant. My ſecond ſuit is, that they having done all ſo well, you will account of them all as one, a Body of many Members, but all of one heart. Opinion might have made them differ, but Affection did move them all to joyn with like love in this great gift. For proportion although it be leſſe then your occaſions may ask, yet it is more then ever

Subjects did give in ſo ſhort a time: nor am I perſwaded it will reſt there, for this is but an earneſt of their affections, to let you ſee, and the world know, what Subjects you have, that when your Honour and the good of the State is ingaged, and aid asked in the ordinarie way of Parliament, you cannot want. This is not a gift of 5 Subſidies alone, but the opening of a Myne of Subſidies which lieth in their hearts.

This good beginning hath wrought already theſe good effects; they have taken your heart, drawn from you a declaration that you will love Parliaments, and again this will meet (I make no queſtion) with ſuch reſpect, that their demands will be juſt, dutifull and moderate; for they that know thus to give, know what is fit to ask. Then cannot your *Majeſtie* do leſſe then out-go their demands, or elſe you do leſſe then your ſelf, or them: for your Meſſage begat truſt, their truſt and your promiſe muſt beget performance. This being done, then ſhall I with a glad heart behold this work as well ended as now begun, & then ſhall I hope that Parliaments ſhall be made hereafter ſo frequent by the effects and good uſe of them, as they ſhall have this further benefit, to deterre from approaching your eares thoſe Projectours and Inducers of Innovation, as Diſturbers both of *Church* and *Common-wealth*.

Now, *Sir*, to open my heart and to eaſe my grief, pleaſe you to pardon me a word more. I muſt confeſſe I have long lived in pain, ſleep hath given me no reſt, favours and fortunes no content, much have been my ſecret ſorrows to be thought the *Man of Separation*, and that divided the King from his People, and them from him. But I hope it ſhall appeare there were ſome miſtaken mindes, that would have made me the *Evil Spirit* that walked between a good Maſter and a loyall people for ill offices; whereas by your *Majeſties* favour I ſhall ever endeavour to approve my ſelf a good ſpirit, breathing nothing but the beſt of ſervice to them all. Therefore this day I account more bleſſed unto me then my birth, to ſee my ſelf able to ſerve them, to ſee you brought in love with Parliaments, to ſee a Parliament expreſſe ſuch love to you, and God ſo love me and mine as I joy to ſee this day.

Sir

Sir John Elliot *in anſwer to Mr Secretary* Cokes *Meſſage of Thanks from the* King *and the Duke of* Buckingham *delivered in the Commons Houſe of Parliament 5.* April, 1628.

Mr. *Speaker*,

I Preſume we have all received great ſatisfaction from his *Majeſtie* as at other times, ſo now in his gracious anſwer and reſolution for the buſineſſe of this Houſe, his anſwer to our Petition for Religion ſo particularly made, his reſolution in that other conſideration concerning the point already ſettled here in Declaration of our Liberties; and for the Parliament in generall, that he hath taken ſo good a liking to our manner of proceeding, as it hath gained his promiſe therein to meet often: where I am made confident as of his grace to us, ſo of our Loyalties, that to thus good a Beginning we ſhould adde ſo happy a Concluſion, as ſhall increaſe that liking and good opinion in his *Majeſtie*, and from henceforth make him more and more in love with *Parliaments*.

As thus in generall, ſo in my particular I receive excellent ſatisfaction herein, ſo as I have not words enough ſufficiently to utter it. And yet I confeſſe that extremity of joy is not without trouble, which muſt likewiſe be declared, to diſburden this affection which cannot otherwiſe ſo lively and ſo faithfully expreſſe me in the ſervice of the Houſe as I have reſolved.

I know not what fatality or infortunity crept in, but I obſerve in the cloſe of that Relation no mention of any other in addition to his *Majeſty*, and that which formerly hath been a matter of complaint, here I find it ſtill, the mixture with his *Majeſtie* not only in his buſineſſe but in name. Is it that any man conceives the mention of others (of what quality ſoever) can adde encouragement or affection to us in our Duties and Loialties towards his *Majeſtie*, or give them greater latitude or extent then naturally they have? Or is it ſuppoſed that the power or intereſt of any man can adde more readineſſe to his *Majeſty* in his gracious inclination to us, then his own goodneſſe gives him? I cannot believe it. And as the Sweetneſſe and Pietie of his *Majeſty*, which we have in admiration, makes me confident in this; ſo the expreſſion of our Dutie ſo perſpicuous and cleer as already hath been given, is my aſſurance for the other.

But Sir, I am ſorry there is this occaſion that theſe things ſhould be argued, or this mixture, which was ſo meerlie condemned, ſhould appear again. I beſeech you, Sir, let it not be hereafter, let no man take this boldneſſe within theſe walls, to introduce it: though (I confeſſe)

for my particular I ſhall readily commend, nay, thank that man whoſe endeavours are applyed to ſuch offices as may be advantageable for the publick, yet in this manner, ſo contrarie to the cuſtomes of our Fathers, and the honour of our Times, as I cannot without Scandall apprehend it, I cannot without ſome Character or exception paſſe it. And therefore I deſire that ſuch interpoſition may be left, and that all other **** reſpects and goodneſſes of his *Majeſty*, in the confidence of our own loyaltie and affections.

Now let us proceed to thoſe ſervices that concern him, which I doubt not in the end will render us ſo reall unto him, that we ſhall not need more help to endear us to his favour.

A Meſſage by Secretary Coke *from the* King *to the Lower Houſe*, April 7. 1628.

HIs *Majeſty* hath again commanded me to put you in mind how the eyes and intereſt of the *Chriſtian World* are caſt upon the good or ill ſucceſſe of this Aſſemblie. He alſo graciouſly taketh notice of that which is in agitation amongſt us touching the freedome of our Perſons and propriety of our Goods. And that this particular care, which he in no way miſliketh, may not retract our reſolution for the generall good, he willeth us cheerfully to proceed in both, and to expreſſe our readineſſe to ſupply his great Occaſions, upon aſſurance that we ſhall enjoy all our Rights and Liberties with as much freedome and ſecurity in his time, as in any age heretofore under the beſt of our Kings. And whether you ſhall think fit to ſecure our ſelves herein by way of Bill, or otherwiſe, ſo as it be provided for with due reſpect to his Honour and the publick good, whereof he doubteth not but you will be carefull; he promiſeth and aſſureth you that he will give way unto it: and the more confidence you ſhall ſhew to his Grace and Goodneſſe, the more you ſhall prevaile to obtain your deſires.

Sir Benjamin

Sir Benjamin Ruddier's *Speech upon the receipt of his* Majeſtie's *Anſwer to the Petition againſt Recuſants.*

Mr Speaker,

THe beſt thanks we can return his *Majeſty* for his gracious and religious anſwer he hath given to our Petition, is to move towards that which will both pleaſe him and ſecure our ſelves.

The dangers and neceſſities of the preſent ſtate, Mr Speaker, are ſo obvious to every mans eye and underſtanding, and therefore ſo well known, as to make a large and particular rehearſall of them would rather aſtoniſh our judgements, then refreſh our memorie. Wherefore in ſhort and in groſſe, I will but only reflect upon the deſperate condition of the *Kings Uncle*, the King of *Denmarke*, engaged from hence, even to the hazzard of his own Kingdome, in the quarrell of that royall and victorious Lady his *Majeſties Siſter*, for the recovery of her and her childrens patrimony, the preſervation and reeſtabliſhment of the Religion in thoſe Countreys: ſo that the King is bound in nature, in policie, and in religion to relieve and aſſiſt both the perſons and the cauſe to the utmoſt of his power.

Believe it, Mr Speaker, the hindge of the many buſineſſes mov'd in *Germany* doth not a little preſſe us to look about us at this time; for if that great bodie were once united under one head, it would cruſh all the reſt with the weight of it.

Next let us a little look over into *France*: there ſhall we find the poor men of our Religion expoſed to the furie of an enraged King, with a juſter pretence againſt them then hath been at any time heretofore: beſides, which is worſe, the Kings of *Spain* and *France* are united againſt them and us, and made better friends then ever they meant to have been. So that not to ſuccour and ſupport the Profeſſours of our Religion, will not only be infidelity and cruelty, but improvidence and folly; for their ill is ours.

If *Rochel* ſhould be loſt, which is now in looſing, and his *Majeſty* not able to ſet out one ſhip to help it, if it ſhould be loſt, it would hazzard the totall extirpation of the Religion, beſides it would be an extraordinarie advantage to the King of *France* for ſhipping, and as great a diſadvantage to us in reſpect of the neighbourhood: and if the *Sound* ſhould be loſt too, whereby ſhould we eſcape from being ſwallowed up by a *Spaniſh* invaſion? this Iſland would be more like to a priſon then a Kingdome, for we were not able to walke abroad.

Theſe are dangers too many; yet have I willingly abridged them, for I had rather come to the remedy, ſo ſhould we all: which conſiſts only in money plentifully and ſpeedily brought in, wiſely and judiciouſly

diciouſly laid out. I doubt not but wee are all reſolved to give: wherefore, Mr Speaker, let us prepare our ſelves to give plentifully, to ſatisfie the publick occaſions, to heave his *Majeſty* out of neceſſity; for neceſſity is the worſt Counſeller, and I ſhall be verie ſorry that we of all others ſhould be guilty of placing ill Counſell about the King: and now to think of ſparing when all lies at the ſtake, were the moſt undoing kind of prodigality.

Let us give ſpeedily, for delaie is the greateſt danger of all dangers, it will not only looſe that which we give, but that alſo which we would give. And this I propound not as the Kings buſineſſe, but our way wherein every man in this houſe hath particular intereſt, if his fortune, his life, his religion be any thing unto him. Neither ſpeak I this to divert the great buſineſſe in hand, but to haſten it; for I love as well, Mr Speaker, to tread upon *Engliſh* ground, as any man here doth.

The King's Meſſage *to the Houſe of Commons by Mr Speaker, 12 April, 1628.*

HIs *Majeſty* having given timely notice to this Houſe as well of the preſſing of the time, as of the neceſſity of ſupply, hath long ſince expected ſome fruit of that which was ſo happily begun; but finding an unexpected ſtop, almoſt beyond all expectation, after ſo good a beginning, hath commanded me to tell you that without any further unneceſſary delay you proceed with his buſineſſes: for however he hath been willing and conſenting his affaires and ours ſhould concurre and proceed together; yet his meaning was not that one ſhould give interruption to another, nor the time to be ſpunne out upon any pretence, upon which the common cauſe of *Chriſtendome* doth ſo much depend. He bids us therefore to take heed, and force not him to make an unpleaſing end of that which hath been ſo well begun.

The

The Petition concerning the billetting *of* Souldiers, 14 *April*, 1628.

To the Kings moſt Excellent Majeſty.

IN all humility complaining, ſhew unto your moſt excellent *Majeſty* your loyall and dutifull Commons now in Parliament aſſembled, That whereas by the fundamentall Lawes of this your Realme, every free-man hath, and of right ought to have a full and abſolute propriety in his goods and eſtate, and that therefore the billetting and placing of Souldiers in the houſes of any ſuch free-man againſt his will is directly contrarie to the ſaid Lawes, under which we and our Anceſtours have been ſo long and happily governed: yet in apparent violation of the ſaid ancient and undoubted right of all your *Majeſties* moſt loyall Subjects of this your Kingdome in generall, and to the grievous and inſupportable vexation and detriment of many Countreys and perſons in particular, a new, and heretofore almoſt unheard of way hath been invented, and put in practiſe, to lay Souldiers upon them, ſcattered in Companies here and there, even in the heart and bowels of this Kingdome, and to compell many of your *Majeſties* Subjects to receive and lodge them in their own houſes, and both themſelves and others to contribute towards the maintenance of them, to the exceeding great diſſervice of your *Majeſty*, to the generall terrour of all, and utter undoing of many of your poor people. Inſomuch that we cannot ſufficiently, nor in any ſort proportionable to the lively ſenſe that we have of our miſerie herein, are we able to repreſent unto your *Majeſty* the innumerable miſchiefs and continuall vexations that by this meanes alone we do now ſuffer, whereof we will not preſume to trouble your ſacred eares with particular inſtances. Only (moſt gracious Sovereign) we beg leave to offer unto your gracious view and compaſſionate Conſideration a few of them in generall.

Firſt, The ſervice of almighty God is hereby greatly hindred, the people in many places not daring to repair to the Churches, leaſt the Souldiers in the mean time ſhould rifle their houſes.

2. The ancient and good government of the Countrey is hereby neglected and contemned.

3. Your Officers of Juſtice in performance of their duties have been reſiſted and indangered.

4. The rents and revenues of your Gentrie greatly and generally diminiſhed; Farmers to ſecure themſelves from the Souldiers inſolencie, being by the clamours and ſolicitation of their fearfull and injured wives and children inforced to give up their wonted dwellings, and to retire themſelves into places of more ſecure habitation.

5. Husbandmen, that are as it were the hands of the Countrey, cor-

rupted by ill example of the Souldiers, and incouraged to idle life, give over work, and rather ſeek to live idly at another mans charge, then by their own labours.

6. Tradeſmen and Artificers almoſt diſcouraged, being inforced to leave their trades, and to imploy their time in preſerving themſelves and their families from violence and cruelty.

7. Markets unfrequented, and our wayes grown ſo dangerous, that your people dare not paſſe to and fro upon their uſuall occaſions.

8. Frequent robberies, aſſaults, batteries, burglaries, rapes, rapines, murthers, barbarous cruelties, and other moſt abominable vices and outrages are generally complained of from all parts, where theſe Companies have been and had their abode, few of which inſolencies have been ſo much as queſtioned, and fewer according to their demerits puniſhed.

Theſe and many other lamentable effects, moſt dread and dear Sovereign, have by this billetting of Souldiers fallen upon your loyall Subjects, tending no leſſe to the diſſervice of your *Majeſty*, then to their own impoveriſhing and deſtruction: ſo that they are thereby exceedingly diſabled to yield your *Majeſty* thoſe ſupplies for your urgent occaſions which they heartily deſire. And yet they are further perplexed with apprehenſion of more approching dangers, one in regard of your Subjects at home, and the other from Enemies abroad. In both which reſpects it ſeems to threaten no ſmall Calamitie.

For the firſt, the meaner ſort of your people being exceeding poor (whereof in many places be great multitudes) and therefore in times of moſt ſettled and conſtant adminiſtration of Juſtice not eaſily ruled, are moſt apt upon this occaſion to caſt off the reines of government, and by joyning themſelves with theſe diſordred Souldiers, are very likely to fall into mutinie and rebellion; which in faithfull diſcharge of our duties we cannot forbear moſt humblie to preſent to your high and excellent Wiſdome, being preſt with probable feares that ſome ſuch miſchief will ſhortly enſue, if an effectuall and ſpeedie courſe be not taken to remove out of the land, or elſe otherwiſe to disband thoſe unruly Companies.

For the ſecond, we do moſt humbly beſeech your *Majeſty* to take into your Princely conſideration, that many of theſe Companies, beſides their diſſolute diſpoſitions and carriages, are ſuch as do openly profeſſe themſelves to be *Papiſts*, and therefore to be ſuſpected, that if occaſion ſerve they will rather adhere to a forreign Enemy of that Religion, then to your *Majeſtie* their liege Lord and Sovereign; eſpecially ſome of their Captaines and Commanders being as Popiſhlie affected as themſelves, and having ſerved in the warres in the behalf of the King of *Spain* and the *Areh-Dutcheſſe* againſt your *Majeſties* Allyes: which of what pernicious conſequence it may prove, and how prejudiciall to the ſafety of all your Kingdome, we humblie leave to your *Majeſties* high and Princely Wiſdome.

And

And now upon this and many more (which might be alledged) moſt weightie and important reaſons, grounded upon the maintenance of the worſhip and ſervice of almightie God, the continuance and advancement of your *Majeſties* high honour and profit, the preſervation of the ancient and undoubted Liberties of your people, and therein of Juſtice and Induſtrie and Valour, which clearly concernes the glorie and happineſſe of your *Majeſtie* and all your Subjects, and the preventing of imminent calamities and ruine both of Church and Common-wealth; we your *Majeſties* moſt humble and loyall Subjects, the Knights, Citizens and Burgeſſes of your Houſe of Commons, in the name of all the Commonaltie of the Kingdome, who are upon this occaſion moſt miſerable, diſconſolate and afflicted, proſtrate at the throne of your Grace and Juſtice, do moſt humbly and ardently beg a preſent remove of this inſupportable burthen, and that your *Majeſty* would be graciouſly pleaſed to ſecure us from the like preſſure for time to come.

The nine Heads of the Houſe of Commons to the Speaker.

1. THat it is the ancient right of Parliament, to diſpoſe of matters there debated in their own method.

2. That it is their ancient cuſtome, to conſider of Grievances before matters of Supplie.

3 That yet nevertheleſſe in this Parliament, to expreſſe our affection to his *Majeſty*, contrarie to ordinarie proceedings, we have proceeded in the Supply as farre as we could in that Committee.

4. That we have been ſo farre from delaying, that poſt-poſing the common and preſſing grievances, we have given precedencie to the ſupply, joyning with it only the fundamentall and vitall Liberties of the Kingdome that give ſubſtance to the Subjects.

5. Further to expreſſe the fulneſſe of our affections, we have exceeded our order in that particular concerning the ſupplie, which, though later in propoſition, yet hath been firſt made readie for concluſion in the Committee.

6. No perſon or Councell can be greater lovers of, or more carefull to maintain the ſacred Rights and Prerogatives of the Crown then we: and we do conceive that the maintaining of the fundamentall Rights and Liberties of the Subject is an eſpeciall meanes to eſtabliſh the glory of a *Monarch*, and that by it his Subjects are the better enabled to do him ſervice, which hath been the cauſe of many glorious victories wone by this Nation above other Kingdomes of larger territories and greater number of people.

7. What information is given to his *Majeſty* contrary to this, doth proceed from ſuch perſons as (to ſerve their own ends) under colour of advancing his *Majeſties* Prerogative, do weaken Royall power.

8. We truſt to be cleared in his *Majeſties* judgement, that there hath been no unneceſſary ſtop, but a moſt cheerfull proceeding in the matter of Supply; and therefore we do humbly deſire that his *Majeſty* will take no information in this or any other buſineſſe from private relations, but to judge of our proceedings by the reſolution that ſhall be preſented to his *Majeſtie* from the Houſe.

9. Being thus rightly and graciouſly underſtood, we aſſure our ſelves that the end of this Parliament ſhall be more happy then the beginning.

The Speaker Sir John Finche's *Speech, upon the 9 Heads, 14. April, 1628.*

Moſt Gracious and dread *Sovereign*,

YOur dutifull and loyall Commons here aſſembled were lately humble Suitours for acceſſe to your Royall preſence. The occaſion that moved their deſires herein was a particle of importance worthy your Princely Conſideration, and which (as it well deſerves) ſhould have been the only ſubject of my Speech at this time. But ſince your gracious anſwer for this acceſſe obtained, by a Meſſage from your *Majeſtie*, they have had ſome cauſe to doubt that your *Majeſtie* is not ſo well ſatisfied with the manner of their proceedings, as their heartie deſire is you ſhould be; eſpecially in that part which concernes your *Majeſties* preſent Supply; as if in the proſecution thereof they had of late uſed ſome ſlackneſſe or delay.

And becauſe no unhappineſſe of theirs can parallell with that which may proceed from a miſunderſtanding in your *Majeſtie* of their cleer and loyall intentions, they have commanded me to attend your *Majeſtie* with an humble and ſummarie declaration of their proceedings ſince this ſhort time of their ſitting, which they hope will give your *Majeſtie* abundant ſatisfaction, that never people did more truly deſire to be endeared in the favour and gracious opinion of their *Sovereign*. And withall to let your *Majeſtie* ſee, that as you can no where have a more faithfull Councell, ſo your great deſignes and occaſions can no way be ſo ſpeedily or heartily ſupported as in this old and ancient way of Parliament.

For this purpoſe they humbly beſeech your *Majeſtie* to take into your Royall Conſideration, that although by ancient right of Parliament,

ment, the matters there debated are to be diſpoſed in their true method and order, and that their conſtant cuſtome hath been to take into their conſideration the common Grievances of the Kingdome before they enter upon matter of Supplie; yet to make a full expreſſion of that zeal and affection which they beare to your Royall Perſon, (equalling at leaſt, if not exceeding the beſt affections of their predeceſſours to the beſt of your Progenitours) they have in this Aſſemblie, contrary to ordinary proceeding in Parliament, given your *Majeſties* ſupply precedency before the common Grievances of the Subject, how preſſing ſoever; joyning only with it thoſe fundamentall and vitall Liberties of the Kingdome, which give ſubſiſtence and ability to your Subjects.

This was their originall order and reſolution, and was grounded upon a true diſcerning that theſe two conſiderations could not be ſevered, but did both of them intirely concern your *Majeſties* ſervice, conſiſting no leſſe in encouraging and inabling your Subjects, then in proportioning a Preſent ſuting to your *Majeſties* occaſions and their own abilities.

Nay, ſo farre have they been from uſing any unneceſſary delaies, as that thought of the two that of Supply were later in propoſition amongſt them, yet the Grand Committee (to which both were referred) have made that of your *Majeſties* Supply firſt ready for concluſion. And to be ſure your *Majeſties* Supply might receive no interruption, they (differing from cuſtome and uſage in caſes of this nature) ſent up of thoſe that concern the Subject by parcels, ſome to your *Majeſtie* and ſome to the Lords, to the end your *Majeſtie* may receive ſuch ſpeedy content, as ſutes with the largeſt and beſt extent of their firſt order.

Sir, you are the breath of our noſtrils and the light of our eyes; and beſides the many Comforts which under you and your Royall Progenitours in this frame of Government this Nation hath enjoyed, the Religion we profeſſe hath taught us whoſe Image you are. And we do all moſt humbly declare to your *Majeſtie* that nothing is or can be more deare unto us then the ſacred Rights and Prerogatives of your Crown, no Perſon or Councell can be greater lovers of them, nor more truly carefull to maintain them.

And the fundamentall Liberties which concern the freedome of our perſons and propriety of our goods and eſtates, are an eſſentiall meanes to eſtabliſh the true glorie of a Monarch: for rich and free Subjects as they are beſt governed, ſo they are moſt able to do your *Majeſtie* ſervice, either in peace or warre; which under God hath been the cauſe of the happie victories of this Nation beyond other Kingdomes of larger Territories and greater numbers of people.

What information ſoever contrarie to this ſhall be brought to your *Majeſtie*, can come from no other then ſuch as for their own ends, under colour of advancing the Prerogative, do in truth undermine and weaken Royall Power, and by impoveriſhing the Subject, render this Monarchie leſſe glorious, and the people leſſe able to ſerve your *Majeſtie*.

Having by this which hath been ſaid cleared our hearts and proceedings to your *Majeſty*, our truſt is that in your Royall Judgement we ſhall be free from the leaſt opinion of giving any unneceſſary ſtop to our proceeding in the matter of Supply, and that your *Majeſtie* will be pleaſed to entertain belief of our alacritie and cheerfulneſſe in your ſervice, and that hereafter no ſuch misfortune ſhall befall us to be misunderſtood by your *Majeſtie* in any thing. We all moſt humblie beſeech your *Majeſtie* to receive no information, either in this or any other buſineſſe, from private relations, but to weigh and judge of our proceedings by thoſe reſolutions of the Houſe, which ſhall be preſented from our ſelves.

This rightly and graciouſly underſtood, we are confident from the knowledge of your goodneſſe and our own hearts, that the ending of this Parliament ſhall be much more happy then the beginning, and that it ſhall be ſtiled to all ages *The Bleſſed Parliament*, which making perfect union betwixt the beſt people, your *Majeſtie* may ever delight in calling us together, and we in the Comforts of your Gracious Favour towards us.

In this hope I return to my firſt errand, which will beſt appear by that which I ſhall humbly deſire your *Majeſty* to hear read, being an humble *Petition* from the Houſe of Commons, for redreſſe of thoſe many inconveniences and diſtractions that have befallen your Subjects, by the billetting of Souldiers.

Your Royall Progenitours have ever held their Subjects hearts the beſt Garriſon of this Kingdome. And our humble ſuit to your *Majeſty* is, that our Faith and Loyalty may have ſuch place in your Royall thoughts, as to reſt aſſured that all your Subjects will be ready to lay down their lives for the defence of your Sacred Perſon and this Kingdome.

Not going our ſelves into our Countreys this *Eaſter*, we ſhould think it a great happineſſe to us, and we know it would be a ſingular comfort and encouragement to them that ſent us hither, if we might but ſend them the newes of a gracious Anſwer from your *Majeſty* in this particular; which the reaſons of the Petition, we hope, will move your moſt excellent *Majeſty* graciouſly to vouchſafe us.

The *King's* Anſwer to the Petition concerning billetting of Souldiers, 14 April, 1628.

Mr *Speaker*, and you Gentlemen,

WHen I ſent you my laſt meſſage, I did not expect any Reply, for I intended to haſten you, not to find fault with you. I told you at your firſt meeting that this time was not to be ſpent in words, and I am ſure it is leſſe fit for diſputes; which if I had a deſire to entertain, Mr Speaker's Preamble might give me ground enough.

The Queſtion is not now what Libertie you have in diſpoſing of matters handled in your Houſe, but rather what is fit to be done. Therefore I hope you will follow my example in eſchewing diſputations, and fall to your important buſineſſe.

You make a proteſtation of your affections and zeal to my Prerogative, grounded upon ſo good and juſt reaſons, that I muſt believe you. But I look that you uſe me with the like charitie, to believe what I have delivered more then once ſince your meeting, which is, That I am as forward as you for the preſervation of your true Liberties: yet let us not ſpend ſo much time in this, that may hazzard both my Prerogative and your Liberties to our Enemies.

To be ſhort, go on ſpeedily with your buſineſſe, without fear or more Apologies, for time calls faſt on you, which will neither ſtay for me nor you.

Wherefore it is my dutie to presse you to hasten, as knowing the necessity of it; and yours to give credit to what I say, as to him that sitteth at the Helme.

Sir Dudley Diggs *his Introduction.*

My *Lords*,

I Shall (I hope) auspiciously begin this Conference this day with an Observation out of Holy Story. In the dayes of good King *Josiah*, when the Land was purged of Idolatry, and the great men went about to repaire the House of God, while money was sought for, there was found a Book of the Law, which had been neglected, and afterwards being presented to the good King, procured the blessing which your Lordships may read of in the *Scriptures*.

2 *Chro.* cap. 34. 2 *Kings* cap. 22.

My good Lords, I am confident your Lordships will as cheerfully joyn with the Commons in acknowledgement of Gods great blessing in our good King *Josiah*, as the Knights, Citizens and Burgesses of the Commons House by me (their unworthy servant) do thankfully remember your most religious and truly honourable invitation of them to the late Petition for clensing this Land from Popish Abominations, which I may truly call a necessary and happy repairing of the House of God. And to go on with the parallell, while we the Commons out of our good affection were seeking for money, we found, I cannot say a book of the Law, but many, and those fundamentall, points thereof neglected and broken; which hath occasioned our desire of this Conference.

Wherein I am first commanded to shew unto your Lordships in generall, that the Lawes of *England* are grounded on reason ancienter then bookes, consisting much in unwritten Customes; yet so full of Justice and true Equity, that your most honourable Predecessours and Ancestours many times propugned them with a *Nolumus Mutare*; and so ancient, that from the *Saxons* daies, notwithstanding the Injuries and Ruines of Time, they have continued in most parts the same; as may appear in old remaining Monuments of the Lawes of *Ethelbert* the first *Christian King* of *Kent*, *Ina* King of the *West-Saxones*, *Offa* of the *Mercians*, and of *Alfred* the great *Monarch*, who united the *Saxon* Heptarchie, whose Laws are yet to be seen, published (as some think) by *Parliament*, as he sayes, to that end, *ut qui sub*

In Bibliotheca Cottoniana.

ſub uno Rege, ſub una Lege regerentur. [Libet Lichfield.]

And though the book of *Lichfield*, ſpeaking of the troubleſome times of the *Danes*, ſaies that then, *Jus ſopitum erat in Regno, Leges & conſuetudines ſopitæ ſunt*, and *prava voluntas, vis & violentia magis regnabant quam Judicia vel Juſtitia:* yet by the bleſſing of God a good King *Edward*, commonly called *S. Edward*, did awaken theſe Lawes, *Excitatas reparavit, reparatas decoravit, decoratas confirmavit.* which *confirmavit* ſheweth that good King *Edward* did not give thoſe Lawes, which *William* the *Conquerour* and all his Succeſſours ſithence that have ſworn unto.

Liber de Chartſey, ſive Regiſtrum de Chartſey.

And here, my Lords, by many Caſes frequent in our Modern Lawes, ſtrongly concurring with thoſe of the ancient *Saxon* Kings, I might (if time were not precious) demonſtrate that our Lawes and Cuſtomes were the ſame. I will only intreat your Lordſhips leave to tell you, that as we have now, even in thoſe *Saxon* times they had their *Courts Barons* and *Courts Leets* and *Sheriffs Courts*, by which (as *Tacitus* ſaith of the *Germans*) their Anceſtours *Jura reddebant per pagos & vicos.* And I believe as we have now, they had their *Parliaments*, where new Lawes were made *cum conſenſu Prælatorum, Magnatum & totius Communitatis*; or, as another writes, *cum conſilio Prælatorum, Nobilium & ſapientum Laicorum.*

I will adde nothing out of *Glanvile*, that wrote in the time of *Henry* the ſecond, or *Bracton* that writ in the time of *Henry* the third: only give me leave to cite that of *Forteſcue* the learned *Chancellour* to *Hen. 6.* who writing of this Kingdome ſaith, *Regnum illud in omnibus Nationum & Regum temporibus, eiſdem quibus nunc regitur legibus & conſuetudinibus, regebatur.*

De Dom. polit. et regal.

But, my good Lords, as the Poet ſaid of Fame, I may ſay of our Common Law,

Ingreditur ſolo, caput inter nubila condit. Wherefore the cloudy part being mine, I will make haſte to open way for your Lordſhips to heare more certain Arguments, and ſuch as go on ſurer grounds.

Virgil.

Be pleaſed then to know, that it is an undoubted and fundamentall point of this ſo ancient Common Law of *England*, that the Subject hath a true Proprietie in his goods and poſſeſſions, which doth preſerve as ſacred that *meum* and *tuum* that is the Nurſe of Induſtrie, the Mother of Courage, and without which there can be no Juſtice, of which *meum* and *tuum* is the proper object.

But this undoubted Birthright of free Subjects hath latelie not a little been invaded & prejudiced by preſſures, the more grievous becauſe they have been purſued by Impriſonments, contrary to the Franchiſe of this Land. And when according to the Lawes and Statutes of this Realm redreſſe hath been ſought for in a legall way, by demanding *Habeas Corpus* from the Judges, and a diſcharge or triall according to the Law of the Land, ſucceſſe hath failed; which hath now inforced

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the Commons in this preſent Parliament aſſembled to examine by Acts of Parliaments, Preſidents and Reaſons, the truth of *Engliſh* Subjects Liberties: which I ſhall leave to learned Gentlemen, whoſe weightie Arguments I hope will leave no place in your Lordſhips memories for the errours and infirmities of your humbleſt Servant, that doth thankfully acknowledge the great favour of your moſt honourable and patient attention.

The Argument made by Mr Littleton *at the command of the Houſe of Commons, out of Acts of Parliament and Authorities of Law expounding the ſame, at the firſt Conference with the Lords concerning the Liberty of the Perſon of every Free-man.*

My *Lords*,

UPon the occaſions delivered by the Gentleman that laſt ſpake, your Lordſhips have heard the Commons have taken into their ſerious Conſideration the matter of Perſonall Libertie; and after long debate thereof on divers dayes, as well by ſolemn Arguments as ſingle propoſitions of doubts and anſwers, to the end no ſcruple might remaine in any mans breaſt unſatisfied, they have upon a full ſearch and cleer underſtanding of all things pertinent to the Queſtion, unanimouſly declared That no Free-man ought to be committed or detained in priſon, or otherwiſe reſtrained by the command of the King, or the Privie Councell, or any other, unleſſe ſome cauſe of the commitment, detainer or reſtraint be expreſſed, for which by Law he ought to be committed, detained or reſtrained. And they have ſent me with ſome other of their Members to repreſent unto your Lordſhips the true grounds of ſuch their reſolutions, and have charged me particularly (leaving the reaſons of Law and Preſidents for others) to give your Lordſhips ſatisfaction that this Libertie is eſtabliſhed and confirmed by the whole State, the King, the Lords Spirituall and Temporall, and the Commons, by ſeverall Acts of Parliament. The authority whereof is ſo great, that it can receive no anſwer, ſave by interpretation or repeal by future Statutes. And theſe that I ſhall mind your Lordſhips of are ſo direct to the point, that they can bear no other expoſition at all; and ſure I am they are ſtill in force.

The firſt of them is the *Grand Charter* of the Liberties of *England*, firſt granted in the 17 yeare of King *John*, and renewed in the 9 yeare of

of King *Hen.* 3. and ſince confirmed in Parliament above 30 times. *Cap.* 29. the words are theſe. *Nullus liber homo capiatur, vel impriſonetur, aut diſeiſietur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlagetur, aut exuletur, aut aliquo modo deſtruatur; nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terræ.* Theſe words *Nullus liber homo, &c.* are expreſſe enough: yet it is remarkable that *Matthew Paris* an Authour of ſpeciall credit, doth obſerve *fo.* 432. that the Charter of the 9. *H.* 3. was the very ſame as that of the 17. of King *John, in nullo diſsimiles*, are his words; and that of King *John* he ſetteth down verbatim *fol.* 342. and there the words are directlie *Nec eum in carcerem mittemus*: and ſuch a corruption as is now in the print might eaſily happen 'twixt 9. *H.* 3. and 28. *E.* 1. when this Charter was firſt exemplified.

But certainly there is ſufficient left in that which is extant to decide this queſtion; for the words are, That no Free-man ſhall be taken or impriſoned but by the lawfull judgement of his Peeres, which is by Jury, Peeres for *Pares*, ordinary Jurours for others who are their Peeres; or by the Law of the Land. Which words *Law of the Land*, muſt of neceſſity be underſtood in this Nation to be by due proceſſe of Law, and not the Law of the Land generally; otherwiſe it would comprehend Bond-men, whom we call Villains, which are excluded by the word *liber*; for the generall Law of the Land doth allow their Lords to impriſon them at pleaſure without cauſe, wherein they only differ from the Free-men, in reſpect of their perſons, who cannot be impriſoned without a cauſe. And that this is the true underſtanding of thoſe words *per legem terræ*, will more plainly appear by divers other Statutes that I ſhall uſe, which do expound the ſame accordingly.

And although the words of this Grand Charter be ſpoken in the third perſon, yet they are to be underſtood of Suites betwixt partie and partie, at leaſt not of them alone, but even of the Kings Suites againſt his Subjects; as will appear by the occaſion of the getting of that Charter, which was by reaſon of the differences betwixt thoſe Kings and their people: and therefore properlie to be applyed to their power over them, and not to ordinarie queſtions 'twixt Subject and Subject.

The words *per legale judicium parium ſuorum* immediately precedeing the other *per legem terræ*, are meant of trialls at the Kings Suit, and not at the proſecution of a Subject. And therefore if a Peer of the Realm be arraigned at the Suit of the King upon any Indictment of Murther, he ſhall be tried by his Peeres, that is Nobles: But if he be appealed of Murther by a Subject, his triall ſhall be by an ordinarie Jury of 12 Free-holders; as appeareth in 10. *Edw.* 4. It is ſaid ſuch is the meaning of *Magna Charta*. By the ſame reaſon therefore as *per judicium parium ſuorum* extends to the Kings Suit, ſo ſhall theſe words *per legem terræ*.

And in 8. *E.* 2. *Rot. Parliam. num.* 7. there is a Petition, that a

Writ made under the Privie Seal went to the Guardians of the Great Seal to cauſe lands to be ſeized into the Kings hands; by force of which there went a Writ out of the Chauncery to the Exchequer to ſeize againſt the forme of the Grand Charter, That the King or his Miniſters ſhall out-law no man of Free-hold without reaſonable Judgement: And the partie was reſtored to his land. Which ſheweth the Statute did extend to the King.

There was no invaſion upon this perſonall liberty, till the time of King *Edw.* the 3. which was ſoon reſtrained by the Subject. For in the 5. *E.* 3. *cap.* 9. it is ordained in theſe words; It is enacted that no man from henceforth ſhall be attached by any accuſation, nor forejudged of life or limbe, nor his lands, tenements, goods nor cattells ſeized into the Kings hands againſt the forme of the great Charter. And the Law of the Land 25. *E.* 3. *cap.* 4. is more full, and doth expound the words of the Grand Charter, and it is thus; Whereas it is contained in the great Charter of the Franchiſes of *England*, That no Free-man be impriſoned, or put out of his Free-hold, nor of his Franchiſe nor Free Cuſtome, unleſſe it be by the Law of the Land: it is accorded, aſſented and eſtabliſhed, that from henceforth none ſhall be taken by petition or ſuggeſtion made unto our Lord the King, or to his Councell, unleſſe it be by indictment or preſentment of his good and lawfull people of the ſame neighbourhood where ſuch deeds be done, in due manner, or by proceſſe made by Writ originall at the Common Law; nor that none be out of his Franchiſes or of his Free-hold, unleſſe he be duely brought into anſwer, and forejudged of the ſame by courſe of Law: and if any thing be done againſt the ſame, it ſhall be redreſſed and held for null.

Out of this Statute I obſerve that what in *Magna Charta* and the Preamble of this Statute is termed by the Law of the Land, is in the body of this Act expounded to be by proceſſe made by Writ originall at the Common Law; which is a plain interpretation of the words *Law of the Land*, in the grand Charter. And I note that this Law was made upon the commitment of divers to the Tower, no man yet knoweth for what.

The 28. *E.* 3. is yet more direct, (this Libertie being followed with freſh ſuite by the Subject;) where the words are not many but very full and ſignificant: That no man, of what eſtate or condition he be, ſhall be put out of his lands or Tenement, nor taken nor impriſoned, nor diſinherited, nor put to death, without he be brought into anſwer by due proceſſe of the Law. Here your Lordſhips ſee the uſuall words of the Law of the Land are rendered by due proceſſe of the Law.

36. *E.* 3. *Rot. Parliam. num.* 9. amongſt the Petitions of the Commons, one of them being tranſlated into *Engliſh* out of the *French*, is thus, Firſt that the great Charter, and the Charter of the Forreſt, and the other Statutes made in his time and the time of his Progenitours, for the profit of him and his Commonaltie, be well and firmly kept, and put in

in dueexec ution, without putting diſturbance, or making arreſt contrarie to them by ſpeciall command, or in any other. The anſwer to the Petition, which makes it an Act of Parliament, is, Our Lord the King by the aſſent of the Prelates, Dukes, Earles, Barons, and the Commonaltie, hath ordained and eſtabliſhed that the ſaid Charters and Statutes be held and put in execution according to the ſaid Petition; which is, that no arreſt ſhould be made contrarie to the Statutes by ſpeciall command.

This concludes the Queſtion, and is of as great force as if it were printed. For the Parliament *Roll* is the true warrant of an Act, and many are omitted out of the books that are extant.

36. *E.* 3. *Rot. Parliament. num.* 20. explaineth it further: for there the Petition is, Whereas it is contained in the Grand Charter and other Statutes, that none be taken or impriſoned by ſpeciall command without indictment, or other due proceſſe to be made by the Law; yet oftentimes it hath been and ſtill is, that many are hindred, taken and impriſoned without indictment, or other proceſſe made by the Law upon them, as well of things done out of the Forreſt of the King, as for other things; That it would therefore pleaſe our ſaid Lord to command thoſe to be delivered which are ſo taken by ſpeciall Command, againſt the forme of the Charters and Statutes aforeſaid. The anſwer is, The King is pleaſed, if any man find himſelf grieved, that he come and make his complaint, and right ſhall be done unto him.

37. *E.* 3. *cap.* 18. agreeth in ſubſtance, when it ſaith, Though that it be contained in the great Charter, that no man be impriſoned, nor put out of his Freehold without proceſſe of the Law; nevertheleſſe divers people make falſe ſuggeſtions to the King himſelf, as well for malice as otherwiſe, whereat the King is often grieved, and divers of the Realme put in damage, againſt the forme of the ſaid Charter. Wherefore it is ordained that all they which make ſuch ſuggeſtions be ſent with the ſuggeſtions before the Chauncellour, Treaſurer, and the grand Councell; and that they there find ſuretie to purſue their ſuggeſtions, and incurre the ſame paine that the other ſhould have had (if he were attainted) in caſe that their ſuggeſtions be found evil; and that then proceſſe of the Law be made againſt them, without being taken and impriſoned againſt the forme of the ſaid Charter and other Statutes. Here the Law of the Land in the grand Charter is explained, to be without proceſſe of the Law.

42. *E.* 3. *ca.* 3. At the requeſt of the Commons by their Petitions put forth in this Parliament, to eſchew miſchiefs and damage done to divers of his Commons by falſe accuſers, which oftentimes have made their accuſation more for revenge and ſingular benefit, then for the profit of the King, or of his people, which accuſed perſons ſome have been taken, and ſometimes cauſed to come before the Kings Councell by writ and otherwiſe upon grievous paine againſt the Law; It is aſſented and accorded, for the good governance of the Com-

mons, that no man be put to anſwer without preſentment before Juſtices, or matter of Record, or by due proceſſe, or writ originall, according to the old Law of the Land. And if any thing henceforth be done to the contrary, it ſhall be void in Law, and holden for errour.

But this is better in the Parliament Roll; where the Petition and Anſwer, which make the Act, are ſet down at large, 42. *E.* 3. *Rot. Parliament. num.* 12.

The Petition.

Becauſe that many of the Commons are hurt and deſtroyed by falſe accuſers, who make their accuſations more for their revenge and particular gaine, then for the profit of the King or his people, and thoſe that are accuſed by them ſome have been taken, and others have been made to come before the Kings Councell by writ or other Commandment of the King upon grievous paines, contrary to the Law; That it would pleaſe our Lord the King and his good Councell, for the juſt government of his people, to ordain that if hereafter any accuſer propoſe any matter for the profit of the King, that the ſame matter be ſent to the Juſtices of the one Bench or the other, or the affaires to be enquired and determined according to the Law: And if it concern the accuſer or partie, that he take his ſuit at the Common Law; and that no man be put to anſwer without preſentment before Juſtices, or matter of Record, and by due proceſſe & originall writ according to the ancient Law of the Land. And if any thing henceforward be done to the contrarie, that it be void in Law, and held for errour.

Here by due proceſſe and originall writ according to the Law of the Land, is meant the ſame thing as *per legem terræ* in *Magna Charta*, and the abuſe was they were put to anſwer by the commandment of the King.

The Kings Anſwer is thus.

Becauſe that this article is an article of the Grand Charter, the King wills that this be done as the Petition doth demand.

By this it appeareth that *per legem terræ* in *Magna Charta*, is meant by due proceſſe of the Law.

Thus your Lordſhips have heard Acts of Parliament in the point. But the Statute of *Weſtm.* the 1. *ca.* 15. is urged to diſprove this opinion, where it is expreſly ſaid, That a man is not repleviſable who is committed by the command of the King, without any cauſe ſhewn, which is therefore ſufficient to commit a man to priſon. And becauſe the ſtrength of the Argument may appeares and the anſwer be better underſtood, I ſhall read the words of the Statute, which is thus.

And for as much as Sheriffs and others have taken and kept in priſon ſuch as were repleviſable, and have let out by plevin ſuch as were not repleviſable, becauſe they would gaine of the one partie, and grieve

grieve the other; And foraſmuch as before this time it was not certainly determined what perſons were repleviſable and what not, but only thoſe that were taken for the death of a man, or by Commandment of the King, or of his Juſtices, or for the Forreſt; It is provided, and by the King commanded, that ſuch priſoners as were before outlawed, and they which have abjured the Realme, Provors, and ſuch as be taken with the manner, and thoſe which have broken the Kings priſon, Thieves openly defamed and known, and ſuch as be appealed by Provors ſo long as the Provor be living, if they be not of good name, and ſuch as be taken for burning of houſes, felloniouſly done, or for falſe money, or for counterfeiting the Kings Seal, or perſons excommunicated taken at the requeſt of the Biſhops, or for manifeſt offences, or for Treaſon touching the King himſelf, ſhall be in no caſe repleviſable by the common writ or without writ.

But ſuch as be indicted of larceny by inqueſts taken before Sheriffs or Bailiffs by their office, or for light ſuſpicion, or for petty-larceny that amounteth not to above the value of 12 pence, if they were not guilty of ſome other larceny aforetime, or guilty of receipt of fellons, or of commandment or force or of aid in felony done, or guilty of ſome other treſpaſſe for which one ought not to looſe life or member, and a man appealed by a Provor after the death of a Provor, if he be no common thief, or defamed; ſhall from henceforth be let out by ſufficient ſuretie, whereof the Sheriff will be anſwerable, and that without giving ought of their goods.

And if the Sheriff or any other let any go at large by ſuretie that is not repleviſable, if he be Sheriff or Conſtable, or any Bailiffe of fee which hath keeping of priſoners, and thereof be attainted, he ſhall looſe his fee and office for ever.

And if the under-Sheriff, Conſtable or Bailiffe, of ſuch as have fee for keeping of priſons do it contrarie to the will of his Lord, or any other Bailiffe being not of fee, they ſhall have three yeares impriſonment, and make Fine at the Kings pleaſure. And if any hold priſoners repleviſable after they have offered ſufficient ſureties, he ſhall pay a grievous amercement to the King. And if he take any reward for the deliverance of ſuch, he ſhall pay double to the priſoner, and alſo ſhall pay a grievous amercement to the King.

The Anſwer.

It muſt be acknowledged that a man taken by the Commandment of the King is not repleviſable, for ſo are the expreſſe words of this Statute. But this maketh nothing againſt the Declaration of the Houſe of Commons, for they ſay not that the Sheriff may replevy ſuch a man by ſureties (*ſcilicet Manucaptores*) but that he is bailable by the Kings Court of Juſtice.

For the better underſtanding whereof, it is to be known that there is a difference betwixt repleviſable, which is alwayes by the Sheriff up-

on pledges or ſureties given, and bailable, which is by Court of Record, where the priſoner is delivered to his Baile, and they are his Gaolers, and may impriſon him, and ſhall ſuffer for him bodie for bodie, as appeareth 33. and 36. 83. in the title of *Mainprize p.* 12. 13. where the difference betwixt Baile and Mainprize is expreſly taken.

And if the words of the Statutes themſelves be obſerved, it will appeare plainly that it extends to the Sheriffs and other inferiour Officers, and doth not bind the hands of the Judges.

The Preamble, which is the key which openeth the entrance into the meaning of the makers of the Law, is,

Foraſmuch as Sheriffs and others which have taken and kept in priſon perſons detected of fellony. Out of theſe words I obſerve that it nominateth Sheriffs, and then if the Juſtices ſhould be included, they muſt be comprehended under the generall word *other*, which doth not uſe to extend to thoſe of a higher rank, but to inferiours: for the beſt by all courſe is firſt to be named; And therefore if a man bring a Writ of Cuſtomes and Services, and name Rents and other things, the generall ſhall not include Homage, which is a perſonall ſervice and of a higher nature; but it ſhall extend to ordinarie annuall ſervices, 31. *E.* 1. *Droit.* So the Statute of 13. *Eliz. cap.* 10. which beginneth with Colledges, Deanes and Chapters, Parſons, Vicars, and concludes with theſe words, and others having ſpirituall promotions; ſhall not comprehend Biſhops, that are of a higher degree; as appeares in the Archbiſhop of *Canterburies* Caſe reported By Sr *Edw. Coke lib.* 2. *fo.* 46.

And thus much is explained in this verie Statute towards the end, when it doth enumerate thoſe were meant by the word other, namely under-Sheriffs, Conſtables, Bailiffs.

Again the words are Sheriffs and others which have taken and kept in priſon: now every man knoweth Judges do neither arreſt nor keep men in priſon, that is the office of Sheriffs, and other inferiour Miniſters: therefore this Statute meant ſuch only, and not Judges.

The words are further, that they let out by replevine ſuch as were not repleviſable; that is the proper language for a Sheriff. Nay more expreſſe afterward in the bodie of the Statute, that ſuch as are there mentioned ſhall be in no caſe repleviſable by the common writ (which is *de homine replegiando*, and is directed to the Sheriff) nor without writ which is by the Sheriff *ex officio*. But that which receives no anſwer is this;

That the command of the Juſtices who derive their authorities from the Crown, is there equall as to this purpoſe with the command of the King. And therefore by all reaſonable conſtruction it muſt needs relate to Officers ſubordinate to both, as Sheriffs, under-Sheriffs, Bailiffs, Conſtables and the like. And it were an harſh expoſition to ſay that the Juſtices might not diſcharge their own Command, and yet that reaſon would conclude as much. And that this was meant of the Sheriffs and other Miniſters of Juſtice, appeareth by the recitall 27. *E.* 1. *cap.* 3.

And

And likewiſe by *Fleta*, a Manuſcript ſo called becauſe the Authour lay in the *Fleet* when he made the book: for he *lib.* 2. *cap.* 52. in his *cap.* of Turnes and the views of the Hundred Courts in the Countrie, ſets down the Articles of the Charges that are there to be enquired of; amongſt which one of them is *de replegiabilibus injuſte detentis*, or *irreplegiabilibus dimiſſis*: which cannot be meant of not bailing by the Juſtices; for what have the inferiour Courts in the Countrey to do with the Acts of the Juſtices?

And to make it more plain, he ſetteth down in this Chapter (that concernes Sheriffs only) the very Statute of *Weſtm. cap.* 15. which he tranſlates *verbatim* out of the *French* into the *Latin*, ſave that he renders taken by the command of the Juſtices thus, *per Judicium Juſtitiariorum*: and his Preface to the Statute plainly ſheweth, that he underſtood it of replevine by Sheriffs, for he ſaith, *Qui debent per plegios dimitti, qui non, declarat hoc Statutum*; and *per plegios* is before the Sheriff.

But for direct authoritie, it is the opinion of *Newton* the Chief Juſtice in 22. *H.* 6. 46. where his words are theſe, It cannot be intended that the Sheriff did ſuffer him to go at large by mainprize, for where one is taken by the writ of the King or the command of the King, he is irrepleviſable; but in ſuch caſe his friends may come to the Juſtices for him, if he be arreſted, and purchaſe a *ſuperſedeas*. So he declares the very Queſtion, That the Sheriffs had no power, but that the Juſtices had power to deliver him that is committed by the Kings Command. And both the ancient and modern practiſe manifeſts as much; for he that is taken for the death of a man, or for the Forreſt, is not repleviſable by the Sheriff, yet they are ordinarily bailed by the Juſtices, and were by the Kings writs directed to the Sheriffs in the times of *E.* 1. and *E.* 2. as appeares in the Cloſe Rolls, which could not be done if they were not bailable. And it is every dayes experience that the Juſtices of the *Kings Bench* do baile for murther, and for offences done in the Forreſt, which they could not do if the word irrepleviſable in *Weſtm.* 1. were meant of the Juſtices as well as of the Sheriffs.

For the authorities which have been offered to prove the contrarie, they are in number 3. The firſt is 21. *E.* 1. *Rot.* 2. which alſo is in the book of the Pleas in Parliament at the Tower *fol.* 44. It is not an Act of Parliament, but a reſolution in Parliament upon an action there brought, which was uſuall in thoſe times: and the Caſe is, That *Stephen Rubar* the Sheriff of the Counties of *Leiceſter* and *Warwick*, was queſtioned for that he had let at large by ſureties one *William* the ſon of *Walter le Parſons*, againſt the will and command of the King, when as the King had committed him by Letters under his Privie Seal, that he ſhould do no favour to any man that was committed by the command of the Earle of *Warwick*, as that man was. Whereunto the Sheriff anſwered, that he did it at the requeſt of ſome of the Kings houſhold upon their Letters: and becauſe the Sheriff did acknowledge the receipt of the Kings Letters, thereupon he was committed to priſon, according to the forme of the Statute.

To

To this I anſwer, that he was juſtly puniſhed, for that he is expreſly bound by the Statute *Weſtm.* 1. which was agreed from the beginning. But this is no proof that the Judges had not power to baile this man.

The next Argument is 33. *H.* 6. in the Court of Common Pleas *fol.* 28. 29. where *Robert Poinings* Eſq; was brought unto the Barre upon a *Capias*, and it was returned that he was committed *per duos de Conſilio* (I believe it is miſprinted for *Dnos de Conſilio*, *i. e. Dominos de Conſilio*, which is ſtrongeſt againſt that which I maintain) *pro diverſis cauſis Regem tangentibus*, and he made an Attorney there in an accuſation, whence is inferred that the return was good, and the partie could not be delivered.

To this the Anſwer is plain.

1. No opinion is delivered in that book whether he were delivered or bailed, or not.

2. It appeares expreſly that he was brought thither to be charged in an accuſation of debt at another mans Suit, and no deſire of his own to be delivered or bailed; and then if he were remanded, it is no way materiall to the queſtion in hand.

But that which is moſt relied upon is, the opinion of *Stamford* in his book of the Pleas of the Crown *lib.* 2. *ca.* 18. *fol.* 72. 73. in his *cap.* of *Mainprize*, where he reciteth the Statute of *Weſtm.* 1. *cap.* 15. and then ſaith thus, By this Statute it appeareth that in 4 caſes at the Common Law a man was not repleviſable, to wit, thoſe that were taken for the death of a man, by command of the King, or of his Juſtices, or for the Forreſt. Thus farre he is moſt right. Then he goeth on and ſaith, As to the Command of the King, that is underſtood of the command of his own mouth, or his Councell which is incorporated unto him, and ſpeake with his mouth, or otherwiſe every writ of *Capias* to take a man, which is the Kings command, would be as much. And as to the command of the Juſtices, that is meant their abſolute command: for if it be their ordinarie commandment, he is repleviſable by the Sheriff, if it be not in ſome of the Caſes prohibited by the Statute.

The anſwer that I give unto this is, That *Stamford* hath ſaid nothing whether a man may be committed without cauſe by the Kings command, or whether the Judges ought not to baile him in ſuch caſe; but only that ſuch a one is not repleviſable: which is agreed, for that belongs to the Sheriff. And becauſe no man ſhould think he meant any ſuch thing, he concludes his whole ſentence touching the command of the King and his Juſtices, That one committed by the Juſtices ordinarie command is repleviſable by the Sheriff. So either he meant all by the Sheriff, or at leaſt it appeares not that he meant that a man committed by the King or the Privie Councell without cauſe is not bailable by the Juſtices, and then he hath given no opinion in this caſe. What he would have ſaid if he had been asked the queſtion, cannot be known; neither doth it appeare by any thing he hath ſaid, that he meant any ſuch thing as would be inferred out of him.

And now, my Lords, I have performed the command of the Commons;

mons; and as I conceive, ſhall leave their declaration of perſonall Liberty on ancient and undoubted truth, fortified with 7 Acts of Parliament, and not oppoſed by any Statute or authoritie of Law whatſoever.

The Objections *of the* King's Councell, *with the* Anſwers *made thereunto at the two Conferences touching the ſame matter.*

IT was agreed by Maſter *Atturney* generall, that the ſeven Statutes urged by the Commons were in force, and that *Magna Charta* did extend moſt properly to the King. But he ſaid,

Firſt, that ſome of them are in generall words, and therefore conclude nothing, but are to be expounded by the Preſidents; and others that be more particular are applyed to the ſuggeſtions of Subjects, and not to the Kings Command ſimplie of it ſelf.

Hereunto was anſwered, That the Statutes were as direct as could be, which appeareth by the reading of them: and that though ſome of them ſpeak of ſuggeſtions of the Subject, yet others do not; and thoſe that do are as effectuall, for that they are in equall reaſon, a commitment by Command of the King being of as great force when it moveth by a ſuggeſtion from a Subject, as when the King takes notice of the cauſe himſelf; the rather for that Kings ſeldome intermeddle with matters of this nature, but by information from ſome of their Subjects.

Secondly, Mr *Atturney* objected that *per legem terræ* in *Magna Charta* (which is the foundation of this Queſtion) cannot be underſtood for proceſſe of the Law and originall Writs: for that in all Criminall proceedings no originall Writ is uſed at all, but every Conſtable may arreſt either for fellony, or for breach of the peace, or to prevent a breach of the peace, without proceſſe or originall Writ; and it were hard the King ſhould not have the power of a Conſtable: & the Statutes cited by the Commons make proceſſe of the Law and Writ originall to be all one.

The anſwer of the Commons to this Objection was, That they do not intend originall Writs only by the Law of the Land, but all other legall proceſſe, which comprehends the whole proceedings of Law upon Cauſe, other then the triall by Jurie, *Judicium parium*, unto which it is oppoſed. Thus much is imported *ex vi termini*, out of the word *proceſſe*, and by the true acceptation thereof in the Statutes which have been urged by the Commons to maintain their Declaration, and moſt

eſpecially in the Statute 25. *E.* 3. *cap.* 4. where it appeareth that a man ought to be brought into anſwer by the courſe of the Law; having former mention made of proceſſe made by originall Writ.

And in 28. *E.* 3. *cap.* 3. by the courſe of the Law, is rendered by due proceſſe of the Law. and 36. *E.* 3. *Rot. Parl. num.* 20. the Petition of the Commons ſaith, That no man ought to be impriſoned by ſpeciall Command without Indictment, or other due proceſſe to be made by the Law. 37. *E.* 3. *cap.* 18. calleth the ſame thing Proceſſe of the Law: 42. *E.* 3. *cap.* 3. ſtileth it by due proceſſe and Writ originall; where the conjunctive muſt be taken for the disjunctive: which change is ordinary in the expoſition of the Statutes and Deeds, to avoid inconvenience, to make it ſtand with the reſt and with reaſon. And it may be collected that by the Law of the Land in *Magna Charta*, by the Courſe of the Law in 25. *E.* 3. by due proceſſe of the Law in 28. *E.* 3. other due proceſſe to be made by the Law in 36. *E.* 3. proceſſe of the Law 37. *E.* 3. and by due proceſſe and originall Writ in 42. *E.* 3. are meant one and the ſame thing, the latter of theſe Statutes referring alwayes to the former, and that all of them import any due and regular proceeding of Law upon a Cauſe, other then the triall by Jury. And this doth appeare in *Coke* 10. 74. in the caſe of the *Marſhalſey*; and *Coke* 11. 99. *James Bagg's* caſe, where it is underſtood of giving Juriſdiction by Charter or preſcription, which is the ground of a proceeding by courſe of Law: and in *Selden's* Notes on *Forteſcue fol.* 29. where it is expounded for Law wager, which is likewiſe a triall at Law by the oath of the partie, differing from that by Jurie. And it doth truly comprehend theſe and all other regular proceedings in Law upon Cauſe, which gives authoritie to the Conſtable to arreſt upon Cauſe.

And if this ſhould not be the true expoſition of theſe words *per legem terræ*, the Kings Councell were deſired to declare their meaning: which they never offered to do; and yet certainly theſe words were not put into the Statute without ſome intention of conſequence. Whereupon Mr Serjeant *Aſhley* offered an interpretation of them thus;

Namely, that there were divers Lawes of this Realme, as the *Common* Law, the Law of the *Chauncerie*, the *Eccleſiaſticall* Law, the Law of the *Admiraltie* or *Marine* Law, the Law of *Merchants*, the *Martiall* Law, and the Law of *State*, and that theſe words *per legem terræ* do extend to all thoſe Lawes.

The anſwer.

To this it was anſwered, that we read of no Law of *State*, and that none of theſe Lawes can be meant there ſave the Common Law, which is the principall and generall Law, and is alwayes underſtood by way of excellency, when mention is made of the Law of the Land generally: and that though each of the other Lawes, which are admitted into this Kingdome by Cuſtome or Act of Parliament, may juſtly be called *a* Law of the Land; yet none of them can have the preeminence to be ſtiled *the* Law of the Land. And no Statute, Law-book or other Authoritie,

thoritie, printed or unprinted, could be ſhewen to prove that the Law of the Land being generally mentioned, was ever intended of any other Law then the Common Law; and yet even by theſe other Lawes a man may not be committed without a cauſe expreſſed.

But it ſtandeth with the rule of other legall expoſitions, that *per legem terræ* muſt be meant the Common Law, which is the generall and univerſall Law by which men hold their inheritances. And therefore if a man ſpeak of *Eſcuage* generally, it is underſtood (as *Littleton* obſerveth) of the incertain *Eſcuage*, which is a Knights-Service Tenure for the defence of the Realm by the body of the Tenant in time of warre, and not of the certain *Eſcuage*, which giveth only a contribution in money, and no perſonall ſervice.

And if a Statute ſpeakes of the Kings Courts of Record, it is meant only of the 4 at *Weſtm.* by way of excellency, *Coke 6.* 20. *Gregorie's* Caſe. So the *Canoniſts* by the excommunication ſimplie ſpoken, do intend the greater excommunication. and the *Emperour* in his *Inſtitutions* ſaith, that the Civil Law being ſpoken generally, is meant of the Civil Law of *Rome*; though the Law of every City is a Civil Law: as when a man names the Poet, the *Grecians* underſtood *Homer*, the *Latiniſts Virgil*.

Secondly, admit that *per legem terræ* extends to all the Lawes of the Realm, yet a man muſt not be committed by any of them, but by the due proceedings that are exerciſed by thoſe Lawes, and upon a Cauſe delivered.

Again it was urged, that the King was not bound to expreſſe the cauſe of impriſonment, becauſe there may be in it matter of State, not fit to be revealed for a time, leſt the Confederates thereupon make meanes to eſcape the hands of Juſtice. And thereupon the Statutes cannot be intended to reſtrain all commitments unleſſe a cauſe be expreſſed, for that it would be very inconvenient and dangerous to the State to publiſh the cauſe at the very firſt.

Anſwer.

Hereupon it was replied by the Houſe of Commons, that all danger and inconvenience may be avoided by declaring a generall Cauſe, as for treaſon, ſuſpicion of treaſon, miſpriſion of treaſon, or fellony, without ſpecifying the particular, which can give no greater light to a Confederate then will be conjectured by his very apprehenſion upon the impriſonment, if nothing at all were expreſſed.

It was further alledged, that there was a kind of contradiction in the poſition of the *Commons*, when they ſay the partie committed without a cauſe ſhewed ought to be delivered or bailed: Bailing being a kind of impriſonment, Delivery a totall freeing.

To this it was anſwered, that it hath alwayes been the diſcretion of the Judges to give ſo much reſpect to a Commitment by the Command of the King, or the Privie Councell, (which are ever intended to be done on juſt & weightie Cauſes) that they will not preſently ſet him

free, but baile him to anſwer what ſhall be objected againſt him on his *Majeſties* behalf. But if any other inferiour Officer commit a man without a cauſe ſhewed, they do inſtantly deliver him, as having no cauſe to expect their pleaſure. So the Delivery is applyed to an impriſonment by the command of ſome mean miniſter of Juſtice, Bailing when it is done by the Command of the King or his Councell.

It was ſaid by Mr *Attorney*, That Bailing was a grace and favour of a Court of Juſtice, and that they may refuſe to do it.

This was agreed to be true in divers caſes, as where the caſe doth appeare to be for fellony, or other crimes expreſſed; for that there is another way to diſcharge them in ſome convenient time, by their triall: & yet in ſome of theſe caſes the conſtant practiſe hath been anciently & modernly to baile them. But where no cauſe of the impriſonment is returned but the Command of the King, there is no way to deliver ſuch perſons by triall or otherwiſe, but that of the *habeas Corpus*; and if they ſhould be then remanded, they may be perpetually impriſoned without any remedy at all, and conſequently a man that had committed no offence, be in worſe caſe then a great Offender; for the latter ſhould have an ordinarie triall to diſcharge him, the other ſhould never be delivered.

It was further ſaid that though the Statute of *Weſtm.* 1. *cap.* 15. as a Statute by way of proviſion did extend only to the Sheriff, yet the recitall of that Statute touching the 4 caſes wherein a man was not repleviſable at the Common Law, namely thoſe that were committed for the death of a man, by the command of the King, or the Juſtices, or for the Forreſt, did declare that the Juſtices could not baile ſuch a one, and that Repleviſable and Bailable were *Synonyma* and all one, and that *Stamford* a Judge of great authority doth expound it accordingly, and that neither the Statute, nor he ſayes repleviſable by the Sheriff, but generally without reſtraint, and that if the Chief Juſtice commits a man, he is not to be enlarged by another Court, as appeareth in the Regiſter.

To this it was anſwered;

Firſt, that the recitall and body of the Statute relates only to the Sheriff, as appeareth by the very words.

Secondly, that repleviſable is not reſtrained to the Sheriffs, for that the words import no more that a man committed by the Chief Juſtice is bailable by the Court of *Kings Bench*.

Thirdly, that *Stamford* meaneth all of the Sheriff, or at leaſt he hath not ſufficiently expreſſed that he intended the Juſtices.

Fourthly, It was denyed that Repleviſable and Bailable were the ſame; for they differ in reſpect of the place where they are uſed, Baile being in the Kings Court of Record, Repleviſable before the Sheriff: and they are of ſeverall natures, Repleviſable being a letting at large upon Sureties, Bailing being when one *Traditur in ballium*, and the Baile are his Gaolers, and may impriſon him, and ſhall ſuffer bodie for bodie,

bodie, which is not true of replevying by ſureties. And Baile differeth from Mainprize in this, that Mainprize is an undertaking in a ſumme certain, Bailing is to anſwer the condemnation in Civil cauſes, and in Criminall body for body.

The reaſons and authorities uſed in the firſt Conference were then renewed, and no exception taken to any, ſave in 22. *H.* 6. it doth not appear that the Command of the King was by his mouth, which muſt be intended, or by his Councell, which is all one, as is obſerved by *Stamford*, for the words are theſe, That a man is not repleviſable by the Sheriff, who is committed by the Writ or Commandment of the King.

21. *E.* 1. *rot.* 2. *dorſo* was cited by the Kings Counſell. But it was anſwered, that it concerned the Sheriff of *Leiceſter* only, and not the power of the Judges. 33. *H.* 6. the Kings Attorney confeſſeth was nothing to the purpoſe: and yet that Book hath been uſually cited by thoſe that maintain the contrary to the Declaration of the Houſe of Commons. And therefore ſuch ſudden opinion as hath been given thereupon is not to be regarded, the foundation failing.

And where it was ſaid, that the *French* of 36. *E* 3. *Rot. Parliament.* 9. which can receive no anſwer, did not warrant what was inferred thence, but that theſe words *Sans diſturbance mettre ou arreſt faire et le contre par ſpecial commandment ou en autre maniere*, muſt be underſtood, that the Statutes ſhould be put in execution without putting diſturbance, or making arreſt to the contrarie by ſpeciall command or in other manner: The Commons did utterly deny the interpretation given by the Kings Counſell, and to juſtifie their own did appeal to all men that underſtood *French*, and upon the 7 Statutes did conclude, That their Declaration remained in undoubted truth, not controlled by any thing ſaid to the contrary.

The true Copies of the Records not printed which were uſed on either ſide of that part of the debate.

INter Recorda domini Regis *Caroli* in Theſauro Recepto Scacarii ſui ſub cuſtodia domini Theſaurarii et Camerarii ibidem remanen-tia, viz. placita coram ipſo Domino Rege & Concilio ſuo ad Parliament. ſuum poſt Paſcham apud *London*, in Manerio Archipiſcopi *Ebor.* Anno Regni Domini Regis *Edw.* viceſſimo primo, inter alia ſic continetur, ut ſequitur.

Rot. ſecundo in Dorſo. Vic. Leic. ſci.

Stephanus Rubaz Vic. Leic. & *War.* coram ipſo Domino Rege & ejus concilio arianatus & ad Levem poſitus de hoc quod cum *Jo. Botetourte, Edel Hatche*, & *W. Hemelin.* nuper in ballium ipſius vicecom. per Dominum Regem fuiſſent aſſignati and Goalas Domini Regis deliberandum eidem vic. quendam *W. de Petling* per quendam Appellatorem ante adventum eorundam Juſtic. ibidem appellatum & captum vivente ipſo appellatore uſque diem deliberationis coram eis facte demiſit per plevinam contra formam ſtatuti &c. Et etiam quendam *Radulphum de Cokchall* qui de morte hominis indictatus fuit & per eundem vicecom. captus. Idem vicecomes per plevinam dimiſit contra formam ſtatuti & etiam eundem *Radulphum* ſine terris coram eiſdem Juſtitiariis ad deliberationem predictam produxit contra conſuetudinem Regni & ſimile quendam *Will.* filium *Walteri le Perſone* qui per preceptum Com. War. captus fuit dimiſit per plevinam contra voluntatem & preceptum Domini Regis. Cum idem Dominus Rex ſub Litteras ſuas ſub privato figillo ſuo eidem vic. præcepit quod nulli per præceptum prædicti Com. Warr. capt. aliquam gratiam faciat, &c. Et ſuper hoc præfatus *Johannes Botetourt* qui preſens eſt & qui fuit primus Juſtic. predicorum premiſſa recordatur.

Et prædictus vicecomes dicit quo ad prædictum *Will. de Petlings* quod ipſe nunquam à tempore captionis ipſius *Will.* per prædictum appellatorem demiſſus fuit per plevinam aliquam ante adventum prædictorum Juſtitiariorum, Imo dicit quod per dimidium anni ante adventum eorum Juſtic. captus fuit, & ſemper detentus in priſona abſque plevina aliqua quouſque coram eiſdem damnatus fuit & quo ad prædictum *Radulphum* bene cognoſcit quod ipſe dimiſit eum per plevinam & hoc benefacere potuit ratione & authoritate officii ſui eo quod captus fuit pro quodam ſimplici tranſgreſſione & non pro aliqua felonia pro qua replegiari non potuit & quo ad tertium viz. *Will.* filium *Perſone* bene cognoſcit quod ipſe captus fuit per præceptum prædicti Com. Warr. & quod dimiſit eum per plevinam ſed dicit quod hoc fecit, ad rogatum quorundam de hoſpitio & curia Domini Regis &c. qui eum inde ſpecialiter rogaverunt per literas ſuas & ſuper hoc idem Vic. quæſitus per Dominum Regem quis eum rogavit & literas ſuas ei direxit & ubi lite-

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ra ille ſunt dicit quod *Walterius de langton* eum per literas ſuas inde rogavit ſed dicit quod breve ille ſunt in partibus ſuis *Leic.* & ſuper hoc idem Vic. profert quoddam breve Domini Regis de Privato Sigillo eidem vicecomiti directum quod teſtatur quod dominus Rex ipſi vicecomiti præcepit quod omnes illos tranſgreſſiones contra pacem & de quibus Com. Warr. ei ſcire facerit caperet & ſalvo cuſtodierit abſque aliqua gratia eis faciend. & quia prædictus Juſtitiar. expreſſe recordatur quod ipſe & ſocii ſui per bonu. & Legal. inquiſitionem de militibus & aliis hominibus coram eis fact. invenerunt quod predictus *Willielmus de Petlings* demiſſus fuit per plevinam per magnum tempus ante adventum eorundam & per vicecomite prædicto, & etiam quia predictus vic. cognoſcit quod prędictus *Radulphus* demiſſus fuit per plevinam per ipſum vic. & hoc dicit quod benefacere potuit, eo quod captus fuit pro levi Tranſgreſſione & per Record. ejuſdem Juſtitiarium compertum eſt, quod captus fuit pro morte hominis quod eſt contrarium dicto prędict. vic. & ſimiliter quod idem vic. cognovit quod recepit literam Domini Regis per quam, Rex ei prędcepit quod nullam gratiam fecerit, illis quæ capti fuerunt per præceptum prædicti Comitatis & eidem vic. contra præceptum illud dimiſſit prædictum *Will.* filium *Walteri* per plevinam qui captus fuit per præceptum prædicti Comitatis prout idem vic. fatetur & ſic tum ratione iſtius tranſgreſſione quam aliorum prædictorum incidit in pœnam ſtatuti Conſt. eſt quod prędictus vic. committitur priſonæ juxta formam ſtatuti, &c.

Ex Rotulo Parliament. de Anno Regis Edw. Tertii triceſſimo ſexto Num. 9.

Primierent à la grand Chartre et la Chartre de Foreſte et les autres eſtatuts faits en ſon temps et des ſes Progenitours pour profit de lui et de la Commonalty bien et ferment guarder et mis en due execution ſans diſturbance mettre ou arreſt. faire len contre par ſpecial mandament on en auter manere. Noſtre ſeignieur le Roy per aſſent de Prelatts Countes Barons et la Commonalty ad ordeine et eſtabli et les dits Chartres et ſtatutes ſoient tenurs et mis en execution ſelon la dit petition.

Numero 20.

Item come il ſoit convenuts en la grand Chartre et autres eſtatuts & nul homine ſpoit pris ne impriſon per ſpecial mandament ſans enditement ou autre due proceſſe affair per la loy et ſonent faite ad eſte et uncore eſt et pluſeurs gentes ſont empeſcher pris et impriſones ſans enditement on autre, proces fait per la loi ſur eux ſibien de choſe faite horſe de la forreſt du Roy cum pour autre cauſe que plieſe Seigneur le Roy dit noſtre &c. Commander et deluier ceux et ſont auſi pris per tiel eſpecial mandament Contra le forme des Chartres avantdit dits.

Reſp. It pleiſt au Roy et ſimul le ſeurs que qui viegne et fait le plainte droit lui ſeura fait.

Parliament. anno 42. *E.* 3. *Num.* 12.

Item purce que pluſours de vèſtre Commonalty anients et deſtinite per faux accuſans queux fout lour accuſaments plus per lour venganc̃es et ſinglers profits que purla profit du Roy ou de ſon people et la accuſits

per eux aſcuns on es pris et aſcuns ſoit fait venire deuant le counſel le Roy per brief en autre mandament du Roy sur grief Peme en contra la loir. Pleiſe a noſtre le Roy et ſon bon Concil: pro droit government de ſon people ordeigne que ſe deſors aſcuns accuſore purpoſe aſconet matre pur profit du Roy, et cille matire soit menda à ſes Juſtices det un Bancks ou del autre ou de aſſiſes dent enquere et terminere ſolon la lei et si touche accuſer ou parle dit ſoit sent a le rome les et nul homine soit mis a reſpondere son preſentment de naut Juſtices en choſe de Recordes en per due proceſſe et briefe original ſolon lanciene Loyde la Terre et si rien de sore euanant en ſoit fait a le contre soit voide en lei et ten pur errour.

Reſp. Purce que ceſte article eſt Article de le grand Chartre le Roy voit que loy soit fait come la petition demande.

Ex Rot. Clauſſ. de Anno Regni Regis E. 1. primo Num. 1. M. 1.

Thomas de Clere de Bletchwith captus & detentus in priſona *Northampton* pro tranſgreſſionibus forreſtæ habet literas *Rogero de Clifford* Juſtic. forreſt. citra Trent quod ponatur per ballium dat. apud *Sanctum Martinum* magnum *London*. viceſſimo die *Octobris*.

Deponend. per ballium.

M. 7.

Stephanus de Lyndley captus & detentus in priſona pro tranſgreſſione per ipſum facta in homines Regis *de Lyndley* habet Literas Regis *Galfrido de Nevill* Juſtic. ultra Trent, quod ponatur per ballium.

M. 9.

Thomas Spademan captus & detentus in priſona *Oxon.* pro morte *Will. Wynne* unde rectatus eſt habet Literas Regis Vic. *Oxon* quod ponatur per ballium.

M. 9.

Willielmus de Deane, Matthæus Cruſt, Rogerus de Bedell, Willielmus Halfrench, Robertus Wyall, Alexander Hareing, Harry le Shorne, Nicolas de Sindilond, Turgeſius de Hertfield, Robertus de Pole & *Ricardus de Galeas*, capti & detenti in priſona hoſtra *Cant.* pro morte *Galfridi de Cottillen*, unde appellati ſunt, habent Literas Regis Vicecancellario quod ponantur per ballium dat. 23. die *Martii*.

Clauſſ. Anno 2. Edw. 1. Num. 12.

Rex *Rogero de Clifford* Juſtic. forreſt. citra Trent, mandamus vobis quod ſi *Robertus Umrin* captus & detentus in priſona noſtra *de Aylsburie* pro tranſgreſſione forreſtæ noſtræ invenit vobis 12 probos & legales homines de balliva noſtra qui manucapiant eum habere coram Juſticiariis noſtris ad placita forreſt. cum in partes &c. ad ſtand. inde rect. tunc ipſe *Robertus* ſi ſecundum Aſs. forreſt. fuerit Replegiabilis per dictos 12. interim tradatur in ballium ſicut prędictum eſt & habeatis nomina illorum 12. hominium & hoc breve dat. 27. die *Februarii*.

Clauſſ. Num. 2. E. 1. M. 14.

Willielmus de Bryott, Galfridus de Wickerum, & *Hugh de Stowe*, detent.

tent. in priſona regis *de Aylsbury* pro tranſgreſſione venat. breve direct. *Rogero de Clifford* Juſtic. forreſt quod ſi ſecundum aſs. Forreſt. fuerint repleg. uſque advent. Juſtic. Regis ad placita Forreſt. cum in partes illas venerunt dat. apud *Coddington.* 28. die *Decembris.* *Deponend. in ballium.*

M. 15.

Gilbertus Gourney de Kedington, & *Hugo le Tailour de Kedington*, capti & detenti in priſona de Sancti *Edmundi* pro morte *Edmundi Butting*, unde rectati ſunt, habuerint Literas Regis Vic. Suff. quod ponantur per ballium.

Clauſſ. anno 3. *E* .1. *M.* 11.

Galfridus de Haireton, capt. & detent. in priſona Regis *Ebor.* pro morte *Adel Clerke* unde rectatus eſt habet Literas Regis Vicecomiti *Ebor.* quod ponatur per ballium dat apud *Weſtmonaſterium* viceſſimo octavo die *Junii.*

Membr. 20.

Robertus Belbarbe captus & detentus in priſona Regis de *Newgate* pro morte *Thomæ Pollard*, unde rectatus eſt, habeat Literas Regis Vic. *Midd.* quod ponatur per ballium dat 28. die *Februarii.*

Clauſs. Num. quarto. E. 1. *M.* 5.

Mandat eſt *Radulpho de Sandwich* quod ſi *Willielmus de Pattare* & *Johannes* filius ejus, *Walterius Home*, *Walterius Cornetum*, *Henericus Patch*, & *Willielmus Cardegan* capt. & detent. in priſona Regis de Sancto *Bryanello* pro tranſgreſſione forreſt. unde rectat. ſunt, induunt ſibi 12 probos & legales homines de Balliva ſua (viz.) quilibet eorum duodecim qui eos manucapierent breve coram Juſtic. Regis ad placita forr: cum in partes illas venerunt ad ſtand. inde rect. tunc ipſos *Will. Joh. Henr.* & *Will.* prædict. duodecimo ſecundum aſs. forr. fuerint replegiand. traditur in Ballium ut prædict. eſt ſi habeant nomina illorum duodecem hominum & hoc breve Teſte rege apud *Bellum* locum Regis viceſſimo nono die *Auguſti.*

Clauſſ. anno 4. *E.* 1. *M.* 16.

Henricus filius *Rogeri de Ken de Cotesbrook*, capt & detent. in priſona noſtra *Northampton* pro morte *Simonis le Charreter* unde appellatus eſt habet Literas Regis Vic. *Northampton* quod ponatur per ballium.

Clauſſ. anno quinto E. 1. *M.* 1.

Mandat eſt *Galfrido de Nevill* Juſtic. Forreſt. ultra Trent quod ſi *Walter de Le Greve* capt &. detent. in priſona de *Nott.* pro tranſgreſſione forreſt. invenerit ſibi 12 probos & legales homines &c. qui eum manucapiunt &c. ad ſtand. inde rect. ſecundum Aſs. Forr. Regis tunc ipſum *Walterum* prædict. 12 traditur in ballium ſicut prædict. eſt dat. 16. die *Novembris.*

Mem. 2.

Thomas de Upwell & *Jul.* uxor ejus capti & detenti in priſona de *Wynboteſham* pro morte *Stephani Southell* unde rectati ſunt, habent

Litteras Vicecom. *Norff.* quod ponatur per ballium, dat apud *Rochelan* viceſimo octavo die *Septembris.*

Clauſſ. anno 6. E. 1. Num. 2.

Bitheries Peſle captus & detentus in priſona Regis de *Norwich* pro morte *Julian* quondam ux. ſuæ unde rectatus eſt habet Literas Vicecomiti *Norfolciæ*, quod ponatur per ballium Teſte Rege apud *Weſtmonaſterium* duodecimo die *Novembris.*

M. 4.

Mandat eſt Vicecomiti *Notting.* ſcilicet quod *Thomas de Cadurte* rectat. de tranſgreſſione forr. quam feciſſe dicebatur in forreſta de *Sherwood*, invenerit ſibi ſex probos & legales homines de balliva ſua qui eum manucapiunt habere coram Rege ad mandat. Reg. ad ſtand. rect. coram Rege cum Rex inde cum eum loqui voluerit tunc prædict. *Thomas* ſex hominibus traditur in ballium juxta manucapt. ſupra dict. dat decimo quinto die *Decembris*,

M. 4.

Thomas Burell captus & detentus in priſona Regis *Exon* pro morte *Galfridi Giffard* unde rectatus eſt, habet Literas vicecomiti *Devon.* quod ponatur per ballium.

Clauſſ. anno primo Edw. 2. Membr. 1.

Johannes Brun, de Kollenwrith captus & detentus in priſona Regis *Oxon.* pro morte *Johannis de Sutton*, unde rectatus eſt, habet Literas Regis Vicecomiti *Oxon.* quod ponatur per ballium uſque ad primam Aſs. ſi ea occaſione &c. Teſte Rege apud *Briſtoll*, 28 die *Junii.*

M. 2.

Will. Spore Capellanus captus & detentus in priſona Regis *Exon.* pro morte *Johannis Spore*, unde indictatus eſt, habet Literas Regis Vicecomiti *Devon.* quod ponatur per ballium uſque ad primam Aſſiſam, ſi ea occaſione, &c. Teſte Rege apud *Wyndſ.* 28 die *Maii.*

Numero 10.

Gilbertus Fairchild, captus & detentus in Gaola Regis *Dorceſtr.* pro morte *Henric. de Langton* molendinarii unde indictatus eſt habet Literas quod ponatur per ballium uſque ad primam Aſſiſam, T. Rege apud *Weſtm.* 28 die *Februarii.*

Clauſſ. anno 2. E. 2. M. 1.

Willielmus Sandre de Cobeham, captus & detentus in priſona Regis *Cant.* pro morte *Johannis de ſprincke Johannis Ermond de Dunberke* unde rectatus eſt, habet Literas Vicecancellario quod ponatur per ballium uſque ad primam Aſſiſam ſi ea occaſione &c. Teſte Rege apud *Ceſtr.* viceſſimo octavo die *Junii.*

Radulphus Coſyn, captus & detentus in Gaola Regis *Lanc.* pro morte *Will.* filius *Simonis Le Porter*, unde rectatus eſt habet Literas Regis Vic. *Lanc.* quod ponatur per ballium uſque ad primum Aſſiſam ſi ea occaſione, &c. Teſte Rege apud *Shene* tertio die *Junii.*

M. 7.

Johannes de Githerd captus & detentus in priſona Regis *Eborac.* pro morte

morte *Matth. Sampſon de Eborac.* unde rectatus eſt, habet Literas Regis vicecomiti *Ebor.* quod traditur per ballium uſque ad primam Aſſiſam dat. apud *Langele* quinto die *Aprilis.*

Clauſſ. anno tertio Edw. 2. M. 3.

Adam le Pepper captus & detentus in Gaola Regis *Ebor.* pro morte *Henrici Le Sumer de Eſtricke*, unde rectatus eſt, habet Literas Regis Vicecomiti *Ebor.* quod ponatur per ballium uſque ad primam Aſſiſam Teſte Rege apud *Weſtm.* ſeptimo die *Februarii.* *Deponend. in ballium.*

N. 14.

Margaret uxor *Willielmi Calbot* capta & detenta in Gaola Regis *Norwici* pro morte *Agnet* filiæ *Willielmi Calbot* & *Maltidæ* ſororis ejuſdem *Agnetis*, unde rectata eſt, habet Literas Regis Vicecomiti *Norfolciæ*, quod ponatur per ballium T. Rege apud *Shene* 22. die *Januarii.*

N. 16.

Johannes Frere captus & detentus in Goala Regis *Exon.* pro morte *Ade de Egolegh*, unde rectatus eſt, habet Literas Regis Vicecomiti *Devon.* quod ponatur per ballium Teſte Rege apud *Weſtm.* ſeptimo die *Decembris.*

Clauſſ anno 4. E. 2. M. 7.

Robertus Sheren captus & detentus in Gaola Regis de *Colcheſter* pro morte *Roberti Le Maigne* unde rectatus eſt, habet Literas Regis Vicecomiti *Eſſex.* quod ponatur per ballium uſque ad primam Aſſiſam dat 22 die *Maii.*

M. 8.

Willielmus filius *Roberti Le Fiſhere de Shirbourne*, captus & detentus in Goala Regis *Ebor.* pro morte *Roberti Le Monnez de Norton*, unde rectatus eſt, habet Literas Regis Vicecomiti *Ebor*, quod ponatur per ballium uſque ad primam Aſſiſam dat. 25 die *Aprilis.*

Clauſſ. anno 4. Edw. 2. N. 22.

Thomas Ellis de Stamford captus & detentus in priſona Regis *Lincoln*, pro morte *Mich.* filii *Willielmi de Foddering*, unde rectatus eſt habet Literas Regis Vicecomiti *Lincoln*, quod ponatur per ballium uſque ad primam Aſſiſam Teſte rege apud novum *Monaſterium* octavo die *Septembris.*

The

The Argument which by command of the Houſe of Commons, *was made at their firſt conference with the* Lords, *touching the Liberty of the perſon of every* Free-man, *out of Preſidents of Record and Reſolutions of* Judges *in former times, by M^r* Selden.

My *Lords*,

YOur Lordſhips have heard from the Gentleman that laſt ſpake a great part of the grounds upon which the Houſe of Commons, after mature deliberation, proceeded to that cleer reſolution touching the right of Liberty of their perſons. The many Acts of Parliament (which are the written Lawes of the Land, and are expreſly in the point) have been read and opened, and ſuch objections as have been by ſome made to them, and ſome other objections alſo made out of other Acts of Parliament, have been cleerly anſwered.

It may ſeem now perhaps, my Lords, that little remaines needfull to be further added for the enforcement and maintenance of ſo fundamentall and eſtabliſhed a right and liberty belonging to every Free-man of the Kingdome.

But in the examination of Queſtions of Law or Right, beſides the Lawes or Acts of Parliament, that ought chiefly to regulate and direct every mans judgement, whatſoever hath been put in practiſe to the contrarie; there are commonly alſo uſed former Judgements or Preſidents: and they indeed have been ſo uſed ſometimes, that the weight of Reaſon, of Law, and Acts of Parliament hath been laid by, and reſolutions have been made, and that in this very point, only upon the interpretation and apprehenſion of Preſidents.

But Preſidents, my Lords, are good *media* or proofs of illuſtration or confirmation when they agree with the expreſſe Law; but they can never be proof enough to overthrow any one Law, much leſſe ſeven ſeverall Acts of Parliament, as the number of them is for this point.

The Houſe of Commons therefore taking into conſideration, that in this Queſtion (being of ſo high a nature that never any exceeded it in any Court of Juſtice whatſoever) all the ſeverall wayes of juſt examination of the truth ſhould be uſed, have alſo moſt carefully informed themſelves of all former Judgements or Preſidents concerning this great point either way, and have been no leſſe carefull of the due preſervation of his *Majeſties* juſt Prerogative, then of their own Rights.

The

The Preſidents here are of two kinds: either meerly matter of Record, or elſe the former reſolutions of Judges after ſolemn debate in the point.

This part that concernes the Preſidents the Houſe of Commons have commanded me to preſent to your Lordſhips, which I ſhall as briefly as I may; ſo I ſhall do it alſo faithfully and perſpicuouſly.

To that end, my Lords, before I come to the particulars of any of theſe Preſidents, I ſhall firſt remember to your Lordſhips that which ſerves as a generall key for the opening and true apprehenſion of all them of Record, without which key no man (unleſſe he be verſt in the Entries and Court of the *King's Bench*) can poſſibly underſtand them.

In all caſes, my Lords, where any right or Liberty belongs to the Subject by any poſitive Law, written or unwritten, if there were not alſo a remedy by Law for the enjoying or regaining of this right or Libertie when it is violated or taken from him, the poſitive Law were in vain; and to no purpoſe were it for any man to have right in any land or other Inheritance, if there were not a known remedy, that is an Action or Writ, by which in ſome court of ordinary Juſtice he might recover it. And in this caſe of right of Liberty of the Perſon, if there were not a remedy in the Law for regaining it when it is reſtrained, it were to no purpoſe to ſpeak of Lawes that ordain it ſhould not be reſtrained.

Therefore in this caſe alſo I ſhall firſt obſerve the remedy that every Free-man is to uſe for the regaining of his Liberty when he is againſt Law impriſoned, that ſo upon the legall courſe and form to be held in uſing that remedy, the Preſidents or Judgements upon it (for all Preſidents of Record riſe out of this Remedy) may be eaſily underſtood.

There are in the the Law divers remedies for enlargement of a Free-man impriſoned, as the Writs of *odio & atia*, and of *homine replegiando*, beſides the common and moſt known Writ of *habeas Corpus*, or *Corpus cum cauſa*, as it is called alſo.

The firſt two are Writs to be directed to the Sheriff of the Countie, and lye only in ſome particular caſes, with which it would be untimely for me to trouble your Lordſhips, becauſe they concern not that which is committed to my charge.

But that Writ of *habeas Corpus* or *Corpus cum cauſa*, is the higheſt remedy in Law for him that is impriſoned by the ſpeciall command of the King, or of the Lords of the Councell, without ſhewing cauſe of the commitment. Neither is there any ſuch thing in the Lawes of this Land, as a Petition of Right to be uſed in ſuch caſes for the Liberty of the perſon, nor is there any other legall Courſe to be taken for enlargement in ſuch caſes, howſoever the contrary hath upon no ground or colour of Law been pretended.

Now, my Lords, if any man be ſo impriſoned by any ſuch com-

mand or otherwiſe, in any priſon whatſoever through *England*, and deſire either by himſelf, or any other in his behalf this Writ of *habeas Corpus* (for the purpoſe) in the Court of *King's Bench*; the Writ is to be granted to him, and ought not to be denied him, no otherwiſe then any ordinary originall Writ in the *Chauncery* or other common proceſſe of Law may be denyed: Which, amongſt other things, the Houſe of Commons hath reſolved alſo upon mature deliberation, and I was commanded to let your Lordſhips know ſo much.

This Writ is to be directed to the Keeper of the Priſon in whoſe cuſtody the Priſoner remaines, commanding him that at a certain day he bring in the body of the Priſoner, *ad ſubjiciendum & recipiendum juxta quod Curia conſideraverit, & una cum cauſa captionis & detentionis*; and oftentimes *una cum cauſa detentionis* only, *captionis* being omitted.

The Keeper of the Priſon thereupon returnes by what Warrant he detaines the Priſoner, and with his Return filed to his Writ brings the Priſoner to the Barre at the time appointed.

When the Return is thus made, the Court judgeth of the ſufficiency or inſufficiency of it only out of the body of it, without having reſpect to any other thing whatſoever: that is, they are to ſuppoſe the Return to be true whatſoever it be. For if it be falſe, the party may have his remedy by action on the caſe againſt the Gaoler that brings him.

Now, my Lords, when this Priſoner comes thus to the Barre, if he deſires to be bailed, and that the Court upon view of the Return think him in Law to be bailed; then he is alwayes firſt taken from the Keeper of the Priſon that brings him, and committed to the Marſhall of the *Kings Bench*, and afterwards bailed; and the Entrie perpetually is *Committitur Marr. & poſtea traditur in ballium*. For the Court never bailes any man untill he becomes their own Priſoner, and be *in cuſtodia Mareſcalli* of that Court.

But if upon return of the *habeas Corpus* it appears to the Court that the Priſoner ought not to be bailed, nor diſcharged from the Priſon whence he is brought, then he is remanded or ſent back again, there to remain untill by Courſe of Law he may be delivered. And the Entrie in ſuch caſe is *Remittitur quouſque ſecundum legem deliberatus fuerit*, or *Remittitur quouſque &c.* which is all one, and is the higheſt award or Judgement that ever was or can be given upon a *habeas Corpus*.

But if the Judges doubt only whether in Law they ought to take him from the priſon whence he came, or give daie to the Sheriff to amend his Return, (as often they do) then they remand him only during the time of their debate, or untill the Sheriff hath amended his Return; and the Entrie upon it is *Remittitur* only, or *Remittitur priſonæ predict.* without any more. And ſo *remittitur* generally is of farre leſſe moment in the award upon the *habeas Corpus*, then *remittitur quouſque*: howſoever vulgar opinions raiſed out of the fame of the late Judgement be to the contrary.

All theſe things are of moſt known and conſtant uſe in the Court of

of *Kings Bench*, as it cannot be doubted but your Lordſhips will eaſily know alſo from the grave and learned, my Lords the Judges.

Theſe two cauſes, the one of the Entrie of *Committitur Mareſcallo & poſtea traditur in ballium*, and the other *Remittitur quouſque*, and *Remittitur* generally, or *Remittitur priſonæ predict.* together with the nature of the *habeas Corpus*, being thus ſtated, it will be eaſier for me to open, and your Lordſhips to obſerve whatſoever ſhall occurre to this purpoſe in the Preſidents of Record; to which I ſhall come in particular.

But before I come to the Preſidents, I am to let your Lordſhips know the reſolution of the Houſe of Commons touching the enlargement of any man committed by the command of the King, or of the Privie Councell, or of any other, without cauſe ſhewed of ſuch commitment. It is thus:

That if a Free-man be committed, or detained in priſon, or otherwiſe reſtrained by the Command of the King, the Privie Councell, or any other, and no cauſe of ſuch commitment, detainer, or reſtraint be expreſſed, for which by Law he ought to be committed, detained, or reſtrained, and the ſame be returned upon a *habeas Corpus* granted for the partie, that then he ought to be delivered or bailed.

This reſolution as it is grounded upon thoſe Acts of Parliament already ſhewed, and the reaſon of the Law of the Land, which is committed to the charge of another, and anone to be opened unto you; is ſtrengthened alſo by many Preſidents of Record,

But the Preſidents of Record that concerne this point are of two kinds: for the Houſe of Commons hath informed it ſelf of ſuch as concern it either way.

The firſt, ſuch as ſhew expreſly that perſons committed by the Command of the King, or of the Privie Councell, without any cauſe ſhewed, have been enlarged upon Baile when they prayed it. Whence it appeares cleerly that by Law they were bailable, and ſo by *habeas Corpus* to be ſet at liberty. For although they ought not to have been committed without cauſe ſhewen of their commitment; yet it is true that the reverend Judges of this Land in former Ages, did give ſuch a reſpect to ſuch commitment by Command of the King or of the Lords of the Councell, (as alſo to the commitments ſometimes of inferiour perſons) that upon the *habeas Corpus* they rarely uſed abſolutely to diſcharge the priſoners inſtantly, but to enlarge them only upon Baile, which ſufficiently ſecures and preſerves the Liberty of the Subject according to the Lawes that your Lordſhips have already heard. Nor in any of theſe caſes is there any difference made between any ſuch commitments by the King, and commitments by the Lords of the Councell that are incorporated with him.

The ſecond kind of Preſidents of Record are ſuch as have been pretended to prove the Law to be contrarie, and that perſons ſo committed ought not to be ſet at liberty upon Baile, and are in the nature of Objections out of Record.

I ſhall deliver them ſummarily to your Lordſhips with all faith, as alſo the true Copies of them: Out of which it ſhall appear cleerly to your Lordſhips, that of thoſe of the firſt kind there are no leſſe then twelve moſt full and directly in the point to prove that perſons ſo committed are to be delivered upon baile; and among thoſe of the other kind there is not ſo much as one that proves at all any thing to the contrary.

I ſhall firſt, my Lords, go through them of the firſt kind, and ſo obſerve them to your Lordſhips, that ſuch ſcruples as have been made upon them by ſome that have excepted againſt them, ſhall be cleered alſo according as I ſhall open them ſeverally.

The firſt of this firſt kind is of *Edw.3.* time. It is in *Paſche* 18. *E.3. Rot.* 33. *Rex.* The caſe was thus. King *E.3.* had committed by Writ, & that under his Great Seal (as moſt of the Kings Commands in that time were) one *John de Bidleſton* a Clergie-man to the priſon of the *Tower*, without any cauſe ſhewed of the commitment. The Lieutenant of the *Tower* is commanded to bring him into the *Kings Bench*, where he is committed to the Marſhall. But the Court asked of the Lieutenant if there were any cauſe to keep this *Bidleſton* in priſon, beſides that commitment of the King. He anſwered, No. Whereupon (as the *Roll* ſaith) *Quia videtur Curiæ breve predictum* (that is the Kings Command) *ſufficientem non eſſe cauſam predictum* Johannem de Bidleſton *in priſona Marr. Regis hic detinend. idem* Johannes *dimittitur per manucaptionem* Will. de Wakefield and ſome others. Where the Judgement of the Court is fully declared in the very point.

The ſecond of this firſt kind of Preſidents of Record is in the time of *H.* the 8. One *John Parker* was committed to the Sheriffs of *London pro ſecuritate patis*, at the Suit of one *Brinton*, *ac pro ſuſpicione fellonie* committed by him at *Cowall* in *Gloceſterſhire*, *ac per mandatum Dni. Regis*: he is committed to the Marſhall of the *Kings Bench*, *& poſtea iſto eodem Termino traditur in Ballium.* There were other cauſes of the commitment, but plainly one was a Command of the King ſignified to the Sheriff of *London*, of which they took notice.

But ſome have interpreted this as if the commitment here had been for ſuſpicion of fellony by command of the King; in which caſe it is agreed of all hands that the Priſoner is bailable.

But no man can think ſo of this Preſident, that obſerves the Contents and underſtands the Grammar of it, wherein moſt plainly, *ac per mandatum Regis* hath no reference to any other cauſe whatſoever, but is a ſingle cauſe enumerated in the Return by it ſelf, as the Record cleerly ſhewes. It is in the 22. *H.* 8. *Rot.* 37.

The third is of the ſame time. It is 35. *H.* 8. *Rot.* 33. *John Bincks* caſe. He was committed by the Lords of the Councell *pro ſuſpicione fellonie, ac pro aliis cauſis illos moventibus. Qui committitur Mareſcallo, &c. et immediate ex gratia curiæ ſpecial. traditur in ballium.*

They commit him for ſuſpicion of fellony, and other cauſes them there-

thereunto moving, wherein there might be matter of State, or whatſoever elſe can be ſuppoſed, and plainly the cauſe of the commitment is not expreſſed; yet the Court bailed him without having regard to thoſe other unknown cauſes that moved the Lords of the Councell.

But it is indeed ſomewhat different from either of thoſe other two that precede, and from the other nine that follow; For it is agreed, That if a cauſe be expreſſed in the return, inſomuch as the Court can know why he is committed, that then he may be bailed; but not if they know not the cauſe. Now when a man is committed for a cauſe expreſſed, *& pro aliis cauſis Dominos de Concilio moventibus*, certainly the Court can no more know in ſuch a caſe what the cauſe is, then in any other.

The fourth of theſe is in the time of Queen *Mary*. It is *Paſche* 2. and 3. *Phil.* and *Mar.* *Rot.* 58. *Overtons* caſe. *Richard Overton* was returned, upon a *habeas Corpus* directed to the Sheriffs of *London*, to have been committed to them and detained *per mandatum prenobilium virorum honorabilis Concilii Dominorum Regis & Reginæ. Qui committitur Mareſcallo &c. immediate traditur in ballium.*

In anſwer to this Preſident, or by way of objection againſt the force of it, hath been ſaid that this *Overton* ſtood at that time indicted of Treaſon. It is true, he was ſo indeed, but that appeares in another Roll, that hath no reference to the Return, as the Return hath no reference to that Roll.

Yet they that object this againſt the force of this Preſident ſay, That becauſe he was indicted of Treaſon, therefore, though he was committed by the command of the Lords of the Councell without cauſe ſhewed, yet he was bailable for the Treaſon, and upon that was here bailed. Then which Objection nothing can be or is more contrarie to Law or common Reaſon.

It is moſt contrarie to Law, for that cleerly every Return is to be adjudged by the Court out of the body of the Writ it ſelf, & not by any other collaterall or forrain Record whatſoever. Therefore the matter of Indictment here cannot in Law be cauſe of the bailing of the Priſoner.

And it is ſo adverſe to all common Reaſon, that if the objection be admitted, it muſt of neceſſity follow that whoſoever ſhall be committed by the King or the Privie Councell, without cauſe ſhewed, and be not indicted of Treaſon or ſome other offence, may not be inlarged by reaſon of the ſuppoſition of matter of State. But that whoſoever is ſo committed, and withall ſtands ſo indicted, though in another Record, may be inlarged, whatſoever the matter of State be for which he was committed. The abſurdity of which aſſertion needs not a word for further confutation: as if any of the Gent. in the laſt Judgement ought to have been the ſooner delivered if he had been alſo indicted of Treaſon. Certainly if ſo, Traitours and Fellons had the higheſt priviledges of perſonall Liberty, and that above all other Subjects of the Kingdome.

The first of this first kind is of Queen *Marie's* time also. It is *Pasche* 4. & 5. *P. & M. Rot.* 45. the Case of *Edward Newport.* He was brought into the *Kings Bench* by *habeas Corpus* out of the *Tower* of *London cum causa*, viz. *Quod commissus fuit per mandatum Conciliorum Dominæ Reginæ. Qui committitur Marr. &c. et immediate traditur in ballium.*

To this the like kind of answer hath been made as in that other Case of *Overton* next before cited. They say that in another Roll of another Terme of the same year, it appears he was in question for suspicion of Coyning. And it is true, he was so: But the Return and this Commitment mentioned in it have no reference to any such offence, nor hath the Bailment of him relation to any thing, but to the absolute Commitment by the Privie Councell. So that the answer to the like objection made against *Overton's* Case satisfies this also.

The sixth of these is of *Q. Elizabeth's* dayes. It is *Mich. 9. Eliz. Rot.* 35. the Case of *Thomas Lawrence.* This *Lawrence* came in by *habeas Corpus*, returned by the Sheriffs of *London* to be detained in prison *per mandatum Concilii Dominæ Reginæ. Qui committitur Mareschallo, &c. & super hoc traditur in ballium.*

An Objection hath been invented against this also. It hath been said that this man was pardoned: and indeed it appeares so in the margent of the Roll, where the word *pardonatur* is entred. But cleerly his enlargement by Baile was upon the Bodie of the Return only, unto which that Note of *Pardon* in the Margent of the Roll hath no relation at all. And can any man think that a man pardoned (for what offence soever it be) might not as well be committed for some *Arcanum* or matter of State, as one that is pardoned?

The seventh of these is in the same yeare, and of *Easter* Terme following. It is *Pasche 9. Eliz. Rot. 68. Robert Constable's* Case. He was brought by *habeas Corpus* out of the *Tower*, and in the Return it appeared he was committed *per mandatum privati Concilii dict. Dominæ Reginæ. Qui committitur Marr. & postea isto eodem Termino traditur in ballium.*

The like Objection hath been made to this, as to that before of *Lawrence:* but the self same Answer cleerly satisfies for both of them.

The eighth is of the same Queens time, in *Pasche* 20. *Eliz. Rot.* 72. *John Browning's* Case. This *Browning* came by *habeas Corpus* out of the *Tower* whether he had been committed, & was returned to have been committed *per privatum Concilium Dominæ Reginæ. Qui committitur Mareſc. Et postea isto eodem Termino traditur in ballium.*

To this it hath been said, That it was done at the chief Justice *Wraye's* Chamber, and not in Court: and thus the authoritie of the President hath been lessened and sleighted. If it had been at his Chamber, it would have proved at least thus much, That Sr *Christopher Wraye* then chief Justice of the *King's Bench*, being a grave, learned and upright Judge, knowing the Law to be so, did baile this *Browning*, and so enlarge

large him. And even ſo farre were the Preſident of value enough. But it is plain that though the *habeas Corpus* were returnable indeed (as it appeares in the Record it ſelf) at his Chamber in *Serjeant's Inne*, yet he only committed him to the *Kings Bench* preſently, and referred the conſideration of enlarging him to the Court, who afterwards did it. For the Record ſaith, *Et poſtea iſto eodem Termino traditur in ballium*: which cannot be intended of an enlargement at the chief Juſtice his Chamber.

The ninth of this firſt kind is in *Hill. 40. Eliz. Rot. 62. Edward Harecourts* Caſe. He was impriſoned in the *Gate-houſe*, and that *per Dominos de privato Concilio Dominæ Reginæ pro certis cauſis eos moventibus et ei ignotis*, and upon his *habeas Corpus* was returned to be therefore only detained. *Qui committitur Marr. &c. Et poſtea iſto eodem Termino traditur in ballium.*

To this never any colour of anſwer hath been yet offered.

The tenth is *Catesbies* Caſe in the *Vacation* after *Hillary* Terme 43. *E. Rot.* 37. *Robert Catesby* was committed to the *Fleet per warrant. diverſorum prenobilium virorum de privato Concilio Dominæ Reginæ.* He was brought before Juſtice *Fennor*, one of the Judges of the *Kings Bench*, by *habeas Corpus* at *Wincheſter* Houſe in *Southwark*, *& commiſſus fuit Marr. per præfat. Edw. Fennor, & ſtatim traditur in ballium.*

The eleventh is *Richard Beckwith's* Caſe, which was in *Hillary* 12. of King *James*, *R.* 153. He was returned upon his *habeas Corpus* to have been committed to the *Gate-houſe* by divers Lords of the Privy Councell, *Qui committitur Marr. & poſtea iſto Termino traditur in ballium.*

To this it hath been ſaid by ſome, that *Beckwith* was bailed upon a Letter written by the Lords of the Councell to that purpoſe to the Judges. But it appeares not that there was ever any letter written to them to that purpoſe; which though it had been, would have proved nothing againſt the authority of the Record. For it was never before heard of that Judges were to be directed in point of Law by letters from the Lords of the Councell; although it cannot be doubted but that by ſuch letters ſometimes they have been moved to baile men that would not, or did not ask their enlargement without ſuch letters; as in ſome examples that I ſhall ſhew your Lordſhips among the Preſidents of the ſecond kind.

The twelfth and laſt of theſe is that of Sr *Thomas Mounſon's*. It is *Mich. 14. Jacobi Rot.* 147. He was committed to the *Tower per warrantum à diverſis Dominis de privato Concilio Domini Regis Locum-tenenti directum*, and was returned by the Lieutenant to be therefore detained in priſon. *Qui committitur Marr. & ſuper hoc traditur in ballium.*

To this it hath been anſwered, That every body knew by common fame that this Gentleman was committed for ſuſpicion of the death of Sr *Thomas Overbury*, and that he was therefore bailable. A moſt ſtrange interpretation, as if the Body of the Return and the Warrant of the Privie Councell ſhould be underſtood and adjudged out of fame only.

only. Was there not as much a ſame why the Gentlemen that were remanded in the late Judgement were committed? and might not the ſelf-ſame reaſon have ſerved to enlarge them their offence (if any were) being I think much leſſe then that for which this Gentleman was ſuſpected?

And thus I have faithfully opened the number of twelve Preſidents moſt expreſſe in the very point in queſtion, and cleered the Objections that have been made againſt them.

And of ſuch Preſidents of Record as are of the firſt kind, or prove plainly the practiſe of former Ages, and Judgements of the Court of the *Kings Bench* in the very point in behalf of the Subjects, my Lords, hitherto.

I come next to thoſe of the ſecond kind, or ſuch as have been pretended to prove that perſons ſo committed are not to be enlarged by the Judges upon the *habeas Corpus*, but ought to remain in Priſon ſtill at the pleaſure of the King or of the Privie Councell.

Theſe are of two natures. The firſt are thoſe wherein ſome aſſent of the King or the Privie Councell appeares upon the enlargement of a Priſoner ſo committed; as if that becauſe their aſſent appeares, therefore the enlargement could not have been without ſuch aſſent.

The ſecond of this kind are thoſe which have been uſed as expreſſe Teſtimonies of the Judges denying Baile. And in ſuch caſes I ſhall open this alſo to your Lordſhips, which being done, it will moſt cleerly appeare that there is nothing at all in any of theſe that make any thing againſt the Reſolution of the Houſe of Commons touching this point. Nay, they are ſo farre from making any thing againſt it, that ſome of them adde good weight alſo to the proof of that Reſolution.

For thoſe of the firſt nature of this ſecond kind of Preſidents, they begin in the time of *H.* 7. *Thomas Brugge* and divers others were impriſoned in the *Kings Bench ad mandatum Domini Regis*. They never ſought remedy by *habeas Corpus* or otherwiſe, for ought appeares: but the Roll ſayes, *Dominus Rex relaxavit mandatum*, and ſo they were bailed. But can any man think that this is an Argument either in Law or common Reaſon, that therefore they could not have been bailed without ſuch aſſent?

It is common in the Caſes of common perſons, that one being in Priſon for ſurety of the peace, or the like, at the Suit of another, is bailed upon the releaſe of the party plaintiff. Can it follow that therefore he could not have been bailed without ſuch a releaſe? Nothing is more plain then the contrary. It were the ſame thing to ſay that if it appear that a plaintiffe be *non*-ſuit, therefore unleſſe he had been *non*-ſuit he could not have been barred in the Suit. The Caſe laſt cited is *M.* 7. *H.* 7. *Rot.* 6.

The very like is in the ſame year, *Hill.* 7. *H.* 7. *Rot.* 13. the Caſe of *William Bartholmew*, *Williams* Caſe, and divers others. And the ſelf-

ſame

ſame anſwer that is given to the other cleeres this. So in the ſame year *Paſche* 7. *H.* 7. *Rot.* 18. *John Beaumond's* Caſe is the ſame in ſubſtance with thoſe other two; and the ſelf ſame anſwer alſo ſatisfies, that cleeres them.

The next is *Mich.* 12. *H.* 7. *Rot.* 18. *Thomas Yewe's* Caſe. He was committed *ad ſecuritatem pacis*, for ſurety of the Peace, at the ſuit of one *Freeman*, and beſides *ad mandatum Domini Regis*. And firſt *Freeman relaxavit ſecuritatem pacis*, and then Sr *James Hubbard* the then Kings Attorney generall *relaxavit Domini Regis mandatum*: and hereupon he is bailed. The releaſe of the Kings Attorney no more proves that he could not have been enlarged without ſuch releaſe or aſſent, then that he could not have been bailed without the releaſe of ſurety of the Peace by *Freeman*.

The very like is in *Hill.* 9. *H.* 7. *Rot.* 14. the Caſe of *Humphry Batch*: which proves no more here then the reſt of this kind already cited.

Then for this part alſo *Broome's* Caſe of Queen *Elizabeth's* time hath been cited. The Caſe is thus, *Ter.* 39. *Eliz. Rot.* 118. *Lawrence Broom* was committed to the *Gate-houſe per mandatum Dominorum Concilii Domine Regine*, and being returned ſo upon the *habeas Corpus*, is firſt committed to the *Marſhalſey*, (as the courſe is) and then bailed by the Court. Which indeed is an expreſſe Preſident that perhaps might well have been added to the firſt twelve, which ſo plainly ſhews the practiſe of enlarging priſoners in this caſe by Judgement of the Court upon the *habeas Corpus*. But it is true that in the Scrolls of that yeare where the Bailes are entred, (but not the Record of the *habeas Corpus*) there is a note that this *Broom* was bailed *per mandatum privati Concilii ſuper habeas Corpus*. But plainly this is no kind of Argument, that therefore in Law he ought not to have been otherwiſe bailed.

The ſelf ſame is to be ſaid of another of this kind, in *Mich.* 40. *Eliz. Rot.* 37. *Wenden's* Caſe. *Thomas Wenden* was committed to the *Gate-houſe* by the Queen and Lords of the Councell, *pro certis cauſis* generally: he is brought by *habeas Corpus* into the *Kings Bench*, and bailed by the Court.

But it is ſaid that in the Scrolls of that yeare it appeares that this enlargement was *per conſenſum Dominorum privati Concilii*. And it is true that the Queene's Majeſties *Attorney* did tell the Court that the Lords of the Councell did aſſent to it. Followes it therefore that this might not have been by Law done if the parties themſelves had deſired it?

So in *Trinit. primo Jacobi Rot.* 30. Sr *John Brocket* being committed to the *Gate-houſe*, is by *habeas Corpus* returned to ſtand committed *per mandatum privati Concilii*. And he is enlarged *virtute warranti à Concilio prædicto*. But the ſame anſwer that ſatisfies for the reſt before cited, ſerves for this alſo.

The laſt of theſe is *Reyner's* Caſe in *Mich.* 12. *Jacob. Rot.* 119. He was committed to the *Gate-houſe* by the Lords of the Councell: being

brought into the *Kings Bench* by *habeas Corpus* is enlarged upon Baile. But this they ſay was upon a letter written by the Lords of the Councell to the Judges. It is true that ſuch a letter was written; but the anſwer to the former Preſidents of this nature are ſufficient to cleer this alſo.

And in all theſe obſerve, Firſt, That it appeares not the party ever defired to be enlarged by the Court, or was denyed it. Secondly, Letters either of the Councell or from the King cannot alter the Law in any caſe.

So that hitherto nothing that hath been brought for the contrarie part hath any force or colour of Reaſon in it.

We come now, my Lords, to thoſe Preſidents of the other nature cited againſt this Liberty of the Subject, that is, ſuch as have been uſed to juſtify that perſons ſo committed may not be enlarged by the Court.

They are in number eight; but there is not one of them all proves any ſuch thing, as your Lordſhips will plainly ſee upon the opening of them. The firſt foure of them are exactly in the ſame words, ſaving that the names of the Perſons and the Priſons differ. I ſhall therefore cite them all one after another, and then cleer them together.

The firſt is *Richard Everard's* Caſe, *Hill.* 7. *H.* 7. *Rot.* 18. He and others were committed to the *Marſhalſey* of the Houſhold *per mandatum Domini Regis*, and ſo returned upon an *habeas Corpus* in the *Kings Bench.* whereupon the Entrie is only *Qui committitur Mareſcallo, &c.*

The ſecond is *Hill.* 8. *H.* 7. *Rot.* 12. *Richard Cherrye's* Caſe. He was committed to the Major of *Windſor per mandatum Domini Regis*, and ſo returned upon an *habeas Corpus*: and the Entrie is only *Qui committitur Mareſc. &c.*

The third is *Hill.* 9. *H.* 7. *Rot.* 14. *Chriſtopher Burton's* Caſe; who was committed to the *Marſhalſey* of the Houſhold *per mandatum Domini Regis*, and ſo returned upon his *habeas Corpus*: and the Entrie is likewiſe *Qui committitur Mareſcallo, &c.*

The fourth is *George Urſwick's* Caſe, *Paſche* 19. *H.* 7. *Rot.* 23. He was committed to the Sheriffs of *London per mandatum Domini Regis*, and returned ſo upon the *habeas Corpus*, *Qui committitur Mareſc.*

Theſe 4 have been uſed principally as expreſſe Preſidents to prove that a Priſoner ſo committed cannot be enlarged. And perhaps at the firſt ſight by men that know not or obſerve not the courſe and Entries of the Court of *Kings Bench*, they may be apprehended to prove as much: But in truth they rather prove the contrarie; at leaſt there is no ſuch colour in them of any ſuch matter as they have been uſed for.

To which purpoſe I beſeech your Lordſhips to call to your memories that which I firſt obſerved to you, touching the courſe of that Court where a Priſoner is brought in by *habeas Corpus*. He is (if he be not to be remanded) firſt committed to the *Marſhall* of that Court, and then bailed as his Caſe requires, that is ſo certain as it can never be otherwiſe. Now theſe men being thus committed by the expreſſe Command of the King, are firſt you ſee taken from the Priſons where

firſt

firſt they were committed. Wherein you may obſerve by the way, my Lords, that if a generall ſuppoſition of matter of State were of force, in ſuch a caſe it might be as needfull for point of State to have the Priſoners remain in priſon, where the King by ſuch an abſolute Command committed them, as to have them at all committed.

When they have taken them from the Priſons where before they were, they commit them to the *Marſhall* of their own Court, which is but the firſt ſtep to bailing them. Now it appeares not indeed that they were bailed, for then *traditur in ballium* had followed: but nothing at all appeares that they were denied it; perhaps they never asked it, perhaps they could not find ſuch as were ſufficient to bail them. And in truth whenſoever any man is but removed from any Priſon in *England* (though it be for debt or treſpaſſe only) into that Court, the Entrie is but in the ſelf-ſame ſyllables as in theſe 4 Caſes.

And in truth if theſe Preſidents did prove that any of the Priſoners named in them were not bailable, or had been thought by the Court to have been not bailable, it will neceſſarily follow that no man living that is ordinarily removed from any other Priſon into the *Kings Bench*, or that is there upon an ordinary action of debt or action of treſpaſſe, could be bailed. For every man that is brought thither and not remanded, and every man that is but arreſted for debt or treſpaſſe, and not returned into that Court, is likewiſe committed to the *Marſhall* of that Court, and by the ſelf-ſame Entry, and no otherwiſe. Yet theſe 4 have been much ſtood on, and have ſtrangely miſled the judgement of ſome that either did not, or would ſeem not to underſtand the courſe of the Court.

The fifth of this nature is *Edward Page's* Caſe. It is *Trinit. 7. H. 8. Rot.* 23. This might have been well reckoned with the former 4. had not the miſ-entrie only of the Clark made it varie from them. *Edw. Page* was committed to the *Marſhalſey* of the Houſhold, and that *per mandatum Domini Regis*, and returned to be therefore detained: and the Entrie is, *Qui committitur Marr. hoſpitii Domini Regis.* And this word *Marr.* is written in the Margent of the Roll.

This hath been alſo uſed to prove that the Judges did remand this Priſoner. If they had done ſo, the remanding had been only while they adviſed, and not any ſuch award which is given when they adjudge him not bailable. But in truth the word *Committitur* ſhewes that it was not any remanding of him: Nor doth that Court ever commit any man to the *Marſhalſey* of the Houſhold. And beſides the word *Marr.* for *Mareſcallo* in the margent, ſhewes plainly that he was committed to the Marſhall of the *Kings Bench*, and not remanded to the *Marſhalſey* of the Houſhold. For ſuch Entrie of that word in the Margent is perpetually in caſes of that nature, when they commit a man to their own priſon, and ſo give him the firſt ſtep to bailment, which he may have if he ask it, and can find baile. And doubtleſſe thoſe words of *hoſpitii predict.* were added by the errour of the Clark, for want perhaps of diſtinction in his underſtanding of the Mar-

ſhall of the *Kings Bench*, from the Marſhall of the *Houſhold*.

The ſixth of theſe is *Thomas Ceſar's* Caſe. It is in the 8. *Jacobi Regis*, *Rot.* 99. This *Ceſar* was committed to the *Marſhalſey* of the Houſhold *per mandatum Domini Regis*, and returned to be therefore detained; and indeed a *remittitur* is in the Roll, but not a *remittitur quouſque*, but only that kind of *remittitur* which is uſed only whiles the Court adviſeth.

And in truth this is ſo farre from proving any thing againſt the Reſolution of the Houſe of Commons, that it appeares that the opinion of the reverend Judges of that time was, That the Return was inſufficient, and that if it were not amended the Priſoner ſhould be diſcharged. For in the Book of Rules of that Court of *Mich.* Terme, when *Ceſars* Caſe was in queſtion, they did expreſly order that if the Steward and Marſhall did not amend their Return, the Priſoner ſhould be abſolutely diſcharged. The words of the Rule are, *Niſi Seneſcallus & Mareſcallus hoſpitii Domini Regis ſufficienter returnaverint breve de habeas Corpus* Tho. Ceſar, *die Mercurii proxim. poſt quindenam ſancti Martini defendens exonerabitur.*

And this is all the force of that Preſident, but yet there hath been an interpretation uſed upon this Rule. It hath been ſaid that the Judges gave this Rule becauſe the truth was that the Return was falſe; and that it was well known that the Priſoner was committed not by the immediate Command of the King, but by the command of the Lord Chamberlain; and thence (as it was ſaid) they made this Rule. But this kind of interpretation is the firſt that ever ſuppoſed that Judges ſhould take any notice of the truth or falſhood of any Return, otherwiſe then the body of the Return could inform them. And the rule it ſelf ſpeakes plainly of the ſufficiency only, and not of the truth or falſhood of it.

The ſeventh of theſe is the Caſe of *James Demetrius*, *Edward Emerſon*, and ſome others, that were Brewers, and were committed to the *Marſhalſey* of the Houſhold *per mandatum Domini Regis*, and ſo returned upon *habeas Corpus*. And it is true that the Roll ſhewes they were remanded; but the remanding was only upon adviſement. And indeed the grave and upright Judges of that time, were ſo carefull leaſt upon the entring of the remanding any ſuch miſtake might be, as might perhaps miſlead poſterity in ſo great a point, that they would have expreſly the word *immediate* added to *remittitur*, that ſo all men that ſhould meet with the Roll might ſee that it was done for the preſent only, and not upon any debate of the queſtion. And beſides there is no *quouſque* to it, which is uſually added when the higheſt award upon debate or reſolution of this kind is given by them.

The eighth of theſe is the Caſe of Sr *Samuel Saltonſtall*. It is *Hill.* 12. *Jacob.* He was committed to the *Fleet per mandatum Domini Regis*, and beſides by the Court of *Chauncery*, for diſobeying an order of that Court; and is returned upon his *habeas Corpus* to be therefore detained.

tained. And it is true that *a remittitur* is entred in the Roll; but it is only a *remittitur priſonæ predict.* without *quouſque ſecundum legem deliberatus fuerit.* And in truth it appeares in the Record that the Court gave the Warden of the *Fleet* 3 ſeverall dayes at ſeverall times to amend his Return, and in the *interim remittitur priſonæ predict.* ſtill. Certainly if the Court had thought that the Return had been good, they would not have given ſo many ſeverall dayes to have amended it. For if that *mandatum Domini Regis* had been ſufficient in the Caſe, why needed it to have been amended?

The ninth and laſt of theſe is *Trinit.* 13. *Jacob. Rot.* 71. the Caſe of the ſaid Sr *Samuel Saltonſtall.* He is returned by the Warden of the *Fleet* as in the Caſe before, and generally *remittitur* as in the Roll; which proves nothing at all that therefore the Court thought he might not by Law be enlarged: and beſides, in both Caſes he ſtood committed alſo for diſobeying an order in *Chauncery.*

Theſe are all that have been pretended to the contrary in this great point: and upon the view of them thus opened to your Lordſhips, it is plain that there is not one, not ſo much as one at all that proveth any ſuch thing, as that perſons committed by the Command of the King, or of the Lords of the Councell, without cauſe ſhewed, might not be enlarged; but indeed the moſt of them expreſly prove rather the contrary.

Now, my Lords, having thus gone through the Preſidents of Record that concern this point of either ſide, before I come to the other kind of Preſidents which are the ſolemn reſolution of Judges in former times, I ſhall (as I am commanded by the Houſe of Commons) repreſent unto your Lordſhips ſomewhat elſe that they have thought very conſiderable, with which they have met while they were in a moſt carefull enquirie of whatſoever concerned them in this great Queſtion.

It is, my Lords, a draught of an Entry of a Judgement in that great Caſe lately adjudged in the Court of *Kings Bench*, when divers Gentlemen impriſoned *per ſpeciale mandat. Domini Regis*, were by the Award and Judgement of the Court, after ſolemn debate, ſent back to Priſon, becauſe it was expreſly ſaid, that they could not in Juſtice deliver them, though they prayed to be bailed.

The caſe is famous and well known to your Lordſhips, therefore I need not further mention it. And as yet indeed there is no Judgement entred upon the Roll, but there is room enough for any kind of Judgement to be entred. But, my Lords, there is a form of a Judgement, a moſt unuſuall one, ſuch a one as never was in any ſuch Caſe before uſed, (for indeed there was never before any Caſe ſo adjudged) and this drawn up by a chief Clark of that Court, by direction of Mr *Attorney* Generall (as the Houſe was informed by the Clark) in which the reaſon of the Judgement, and the remanding of thoſe Gentlemen is ex-

preſſed in ſuch ſort, as if it ſhould be declared upon Record for ever, that the Law were that no man could be enlarged from impriſonment that ſtood committed by any ſuch abſolute command.

The draught is only in Sr *John Henningham's* Caſe, being one of the Gentlemen that was remanded, and it was made for a form for all the reſt. The words of it are after the uſuall Entrie of a *Curia adviſur: vult* for a time, that *viſis return. predict. nec non diverſis antiquis Recordis in Curia hic remanent. conſimiles caſus concernentibus, maturaque deliberatione inde prius habita, eo quod nulla ſpecialis cauſa captionis ſive detentionis predict.* Johannis *exprimitur, ſed generaliter quod detentus eſt in priſona predict. per ſpeciale mandatum Domini Regis; ideo predictus* Johannes *remittitur prefato Cuſtodi Marr. hoſpitii predict. ſalvo cuſtodiend. quouſque, &c.* that is *quouſque ſecundum legem deliberatus fuerit.* And if that Court, which is the higheſt for ordinary Juſtice, cannot deliver him *ſecundum legem*, what Law is there (I beſeech you, my Lords) that can be ſought for in any other inferiour Court to deliver him?

Now, my Lords, becauſe this draught, if it were entred in the Roll, (as it was prepared for no other purpoſe) would be a great declaration contrary to the many Acts of Parliament already cited, contrary to all Preſidents of former times, and to all reaſon of Law, to the utter ſubverſion of the chiefeſt Liberty and Right belonging to every Free-man of the Kingdome, and for that eſpecially alſo it ſuppoſeth that divers ancient Records had been looked into by the Court in like Caſes, by which Records their Judgements were directed, whereas in truth there is not one Record at all extant that with any colour, not ſo much indeed as with any colour warrants the Judgement: therefore the Houſe of Commons thought fit alſo that I ſhould with the reſt that hath been ſaid, ſhew this draught alſo to your Lordſhips.

I come now to the other kind of Preſidents, that is, ſolemn Reſolutions of Judges; which being not of Record, remain only in authentick Copies. But of this kind there is but one in this Caſe, that is a reſolution of all the Judges in *England* in the time of Queen *Elizabeth*. It was in the foure and thirtieth yeare of her reign, when divers perſons had been committed by abſolute command, and delivered by the Juſtices of one Bench or the other; whereupon it was deſired that the Judges would declare in what Caſes perſons committed by ſuch Command were to be enlarged by them. The reſolution hath been variouſly cited, and variouſly apprehended.

The Houſe of Commons therefore deſiring with all care to enforme themſelves as fully of the truth of it as poſſibly they might, got into their hands from a member of their Houſe a book of ſelected Caſes, collected by a learned and reverend Chief Juſtice of the *Common Pleas*, that was one of them that gave the Reſolution, which is entred at large in that book, I mean the Lord Chief Juſtice *Anderſon*. It is written in that book in his own hand, as the reſt of the book is. And however it

hath

hath been cited, and was cited in that great Judgement given upon the *habeas Corpus* in the *King's Bench*, as if it had been that upon ſuch commitments the Judges might not baile the priſoners; yet it is moſt plain that in the reſolution it ſelf no ſuch thing is contained, but rather expreſly the contrary. I ſhall better repreſent it to your Lordſhips by reading it, then by opening it.

Then it was read.

If this Reſolution doth reſolve any thing, it doth indeed upon the matter reſolve fully the contrary to that which hath been pretended, and enough for the maintenance of this ancient and fundamentall point of Liberty of the Perſon to be regained by *habeas Corpus*, when any man is impriſoned. And I the rather thought fit now to read it to your Lordſhips, that it might be at large heard, becauſe in the great Judgement in the *Kings Bench*, though it were cited at the Barre as againſt this point of perſonall Libertie, as alſo at the Bench, yet though every thing elſe of Record that was uſed was at large read openly, this was not read either at Barre or Bench. For indeed if it had, every hearer would eaſily have known the force of it to have been indeed contrary to the Judgement.

My Lords, having thus gone through the Charge committed to me by the Houſe of Commons, and having thus mentioned to your Lordſhips and opened the many Preſidents of Record, and that draught of the Judgement in the like Caſe, as alſo the Reſolution; I ſhall now, as I had leave and direction given me, leaſt your Lordſhips ſhould be put to too much trouble and expenſe of time in the finding or getting Copies at large of theſe things which I have cited, offer alſo to your Lordſhips authentick Copies of them all, and ſo leave them, and whatſoever elſe I have ſaid, to your Lordſhips further conſideration.

The

The whole Copies of the Preſidents of Record mentioned in one of the Arguments made at the firſt Conference with the Lords touching the Liberty of the Perſon of every Free-man.

INter Recorda Domini Regis *Caroli*, in Theſaurario Receptus Scaccarii ſui, ſub cuſtodia Dom. Theſaurarii & Camerarii ibidem remanentia, viz. Placita coram Domino Rege apud *Weſtmonaſterium* de Termino Paſchæ anno Regis *E.* (3. poſt conqueſtum) Angliæ 15. inter alia ſic continetur ut ſequitur.

Adhuc de Termino Paſchæ, *London* ſc.

Dominus Rex mandavit dilecto & fideli ſuo *Roberto de Dalton* Conſtabulario Turris ſuæ *London*, vel ejus locum-tenenti, breve ſuum in hæc verba: *Edwardus* Dei gratia *Angliæ* & *Franciæ* Rex, & Dominus *Hiberniæ*, dilecto & fideli ſuo *Roberto de Dalton* Conſtabulario Turris ſuæ *London*, vel ejus locum-tenenti ſalutem. Mandamus vobis quod *Johannem de Bildeſton* Cappellanum, quem vicecomites noſtri *London* ad mandatum noſtrum apud prædictam Turrim vobis liberabunt, ab eiſdem recipiatis, & in priſona noſtra Turri prædicta cuſtodiri faciatis, quouſque aliud vobis ſuper hoc duxerimus de mandato. Teſte me ipſo apud Turrim noſtram *London*, trigeſimo die *Martii*, anno Regni noſtri *Angliæ* ſextodecimo, Regni vero noſtri *Franciæ* tertio.

Et modo ſcilicet in Craſt. Aſcenſion. Dom. anno Reg. nunc 18. coram Domino Rege apud *Weſtm.* venit *Johannes de Wyndwick* locum-tenens prædicti Conſtabularii, & adduxit coram Juſticiarios hic in Curia prædicta *Johannem de Bildeſton*, quem alias à præfatis vicecomitibus virtute brevis prædicti recipit &c. Et dicit quod ipſe à Domino Rege habuit in mandatis ducendi & liberandi Corpus ipſius *Johannis de Bildeſton* præfat. Juſtic. hic, &c.

Et quæſitum eſt à prædicto *Johanne Wyndwick*, ſi quam aliam detentionis præfat. *Johannis de Bildeſton* habeat cauſam. Qui dicit quod non niſi breve prædict. tantum. Et quia videtur Curiæ breve prædict. ſufficientem non eſſe cauſam prædict. *Johannem de Bildeſton* in priſona Mareſcall. Reg. hic retinend. &c. idem *Johannes* dimittitur per manucaptionem *Willielmi de Wakefield* Rectoris Eccleſiæ de *Willingham*, *Johannis de Wyndwick* de com. *Lancaſtr.* *Johannis de Lakenham*, & *Johannis de Norton*, de com. *Norfolciæ*, *Nicolai de Wandesford* de com. *Midd.* & *Rogeri de Bromley* de com. *Staff.* qui eum manuceperunt habendi eum coram Domino Rege in Octabis ſanctæ Trinitatis ubicunque &c. viz. corpora pro corpore. Ad quas Octab. ſanct. Trinit. coram Domino Rege apud *Weſtm.* venit prædict. *Johannes* per mandatum

prædict.

prædict Et ſuper hoc Dominus Rex mandavit Juſticiariis ſuis hic quoddam Breve ſuum Clauſum in hæc verba;

Edwardus Dei gratia Rex *Angliæ* & *Franciæ*, & Dominus *Hiberniæ*, dilectis & fidelibus ſuis *Willielmo Scots* & ſociis ſuis Juſticiariis ad Placita coram nobis tenenda aſſignatis, ſalutem. Cum nuper mandaverimus dilecto & fideli noſtro *Roberto de Dalton* Conſtabulario Turris noſtræ de *London*, vel ejus locum-tenenti ibidem, quod *Johannem de Bildeſton* Capellanum & detentum in priſona Turris prædict. præcep. noſtro pro ſuſpicione contrafact. magni Sigilli noſtri, cum attach. & aliis cauſis captionem & detentionem prædict. tangentibus, ſalvo vel ſecure duc. facerent coram nobis in craſtin. Aſcenſionis Domini, ubicunque tunc fuiſſemus in *Anglia*, priſonæ Mareſc. noſtri ibid. liberandum, in eadem quouſque per quendam *Informatorem* eſſemus plenius informati, cuſtodiendum, vel habita inde informat. prædict. ulter. ſuper hoc fieri facerimus quod fore videramus faciendum ſecundum legem & conſuetudinem Regni noſtri *Angliæ*; nos in caſu quod dictus Informator non venit coram nobis ad informandum nos plenius ſuper premiſſis, nolentes eidem *Johanni* eadem de cauſa juſtitiam differri in hac parte, vobis mandamus, quod ſi prædict. Informator in quinden. Sanctæ Trinitatis proxime futurum vel citra, non venerit nos ſuper præmiſſis plenius Informatur tunc adventum ejuſdem Informatoris minime expectato eidem *Johanni* ſuper hoc fieri faciatis juſtitiæ complementum, *Johan.* prout fore videritis faciendum ſecundum legem & conſuetudinem Regni noſtri *Angliæ*. Teſte me ipſo apud *Weſtmonaſt.* 12 die Maii, anno Regni noſtri *Angliæ* 18. vero noſtri *Franciæ* 5.

Quo quidem Breve inſpecto, facta eſt Proclamatio quod ſiquis Dominum Regem ſuper præmiſſis informare, vel erga ipſum *Johannem* proſequi voluerit, quod veniat, &c. Et ſuper hoc ven. prædict. *Will. de Wakefield, Nicol. de Wandſworth, Johannes Brunwyn, Johannes Laggerham, Johannes de Norton*, & *Roger de Bromeley*, omnes de comitatu *Middleſex*. & manuceperunt prædict. *Johan. de Bildeſton*, habend. eum coram Domino Rege de die uſque ad præfat. quindenam Sanctæ Trinitatis ubicunque, &c. Ad quem diem anno 18. coram Domino Rege apud *VVeſtmonaſterium* venit prædictus *Johann. de Bildeſton*, per mandatum prædict. & iterata facta eſt proclamatio in forma qua ſuperius, &c. Et nullus venit ad Dominum Regem informandum, &c. per quod conceſs. eſt quod prædict. *Johann. de Bildeſton* eat inde ſine die ſalva cauſa ſemper actione Domini Regis ſiquam, &c.

De Termino ſancti *Hillarii* anno 22. *Hen.* 8. & per Com. rot. ejuſdem Rot. 37. *London* cum *Glouceſt.*

Johannes Parker per *Richard. Coppin* & *VVill. Danſey* vicecomites *London* virtute Brevis Domini Regis *de latitat* pro pace verſ. ipſum *Johann. Parker* ad ſectam *Johann. Bunton* eis inde direct. et coram Rege duct. cum cauſa, viz. Quod idem *Johannes Parker* captus fuit in Comitatu prædicto pro ſecuritate pacis prædict. ac pro ſuſpicione felloniæ per

ipſum apud *Curmall* in comitatu *Glouceſtriæ*, perpetrat. per nomen *Johannis Parker* de *Thornbury* in comitatu *Glouceſtriæ* Tonſor, alias dictus *Johannes Charles* de eodem comitatu Surgeon, ac per mandatum Domini Regis nunciat. per *Robertum Moore* generoſum de *Cliffords Inne*. Qui committitur Mareſcallo, & iſto Termino traditur in ballium, *Thomæ Atkins* de eiſdem vill. & comitat. Weaver, uſque à die Paſchæ in unum menſem ubicunque &c. Et quod idem *Johannes Parker* citra eundem diem perſonaliter compareret coram Juſticiariis Domini Regis ad proximum general. Gaol. deliberationem in comitatu *Glouceſtriæ*, proxime tenendam, ad ſubjiciendum & recipiendum omnia & ſingula quæ præfati Juſticiarii de eo tunc ordinare contigerint, &c. corpus pro corpore, &c.

Ad quem diem præfat. *Johannes Parker* licet ipſe quarto die placiti ad comparendum non venit, Ideo capierunt eum & pleg. octab. Trinitatis ad quem diem exactum Trin. return. poſtea Trin. 28. *H.* 8. ex in 15 Paſche Ad quem diem breve & vicecomes return. quod adhuc tent. apud *London*, die Lunæ proxime poſt feſtum Sanctæ Scholaſticæ. Anno Regni *H.* 8. 28. prædictus *Johannes Parker*, *Thomas Atkins*, & *Willelmus Note*, ulterius fuerunt, prout patet per brevia Regis tertio Paſche anno 25. Regis prædict.

De Termino Sancti *Mich.* anno 35. *H.* 8. & per Com. ro. ejuſdem. Rot. 33. *Surr.* cum *Bucks.*

Johannes Bincks per *Robertum Dacres* Armiger Seneſcallus Marr. & *Radulphum Hopton* Marr. ejuſdem curiæ virtute brevis Domini Regis ad ſubjiciendum & recipiendum, &c. et eis inde direct. & coram Domino Rege ductus cum cauſa, viz. quod ante adventum brevis prædicti *Johannes Bincks* captus fuit per mandatum privati Conſilii Domini Regis pro ſuſpitione felloniæ & pro aliis cauſis illos moventibus & ductus ad Gaolam Marr. & ibidem detent virtute mandati prædicti, Qui committitur &c. Immediate ex gratia cur. ſpecial. prędictus *Johannes Bincks* per nomen *Johannis Bincks* de magna *Marlow* in comitatu *Bucks weaver* traditur in ballium, *Thomæ Bignam de London* generoſ. & *Johan. Woodward de Marlow* prædict. *Tailor*, uſque in craſtinum ſancti *Martini* ubicunque &c, uterque pleg. corpus pro corpore &c. Ad quem diem comparuit et *Robertus Darcy* Armig. et *Johannes Boſſe* Generoſ. Domin. Juſtitiar. Dom. Regis ad Pacem in Comit. *Bucks* virtute Brevis Dom. Regis eis direct. Dom. Regi certificaverint quod Indictamenta de aliquibus Felon. et tranſgreſſion. verſus prædict. *Joannem Bincks* coram eis ad præſens reſident. Et ulterius de geſtu & fama ipſius *Joannis Bincks* per ſacrament. proborum & legalium hominum comitatu *Bucks*, diligenter inquirend. fecere, Et nihil aliud præter bonum de eo coram eis eſt compertum, ideo conceſſum eſt prædictus *Johannes Bincks*, de premiſſis eat inde ſine die deliberatur per proclamationem, prout mos eſt.

Sine die per proclamationem.

De

De Termino *Paſche*, &c.

De Termino *Paſche* anno 2. et 3. *Phil.* et *Mar. Regis et Reginæ rot.* 58. *London. ſci.*

Richardus Overton de London generoſus, per *Thomam Leigh* & *Johannem Marſhall* Vicecomites *Londini* virtute brevis Domini Regis & Reginæ, de Habeas Corpus ad ſtand. rect. eis inde direct. coram *Willielmo Portman*, mil. Capital. Juſticiar &c. ductus cum cauſa, viz. quod prędictus *Richardus Overton* nono die Octobris, ult. præterit. commiſſus fuit in priſona de *Newgate*, & ibidem in eadem priſona ſub cuſtodia dictorum vicecom. detent. ad mandatum prenobilium Dominorum honorabilis Conſilii prædict. Domini Regs & Reginæ, Qui committitur Marr. &c. Et immediate traditur in ballium. *Willielmo Overton de Lond n* generoſ. & *Johanni Tayler*, de parochia ſancti *Martini* apud *Ludgate London*, *mercer*, uſque octab. Trinitatis, viz. uterque manucapt. prædict. corpus pro corpore. Et poſtea Trin. ſecundo *Elizabethæ Reginæ*, cap. *Overton* & pleg. ſuos Octab. *Michaelis*. Ad quem diem ex menſe *Paſche*. Ad quem Vicecomitem retorn. quod ad Huſting ſuum tenent apud *Guildhall* civitati *Londini* die lunæ proxime poſt feſtum ſancti *Georgii* Epi. prædictus *Willielmus Overton* ulterius eſt per brevia pacis anno ſupra dicto.

De Termino ſancti *Michaelis* anno 2. & 3. *Phil & Mar.* Regis & Reginæ *Rot.* 6.
Habet *Cart.* allocat. *Trin.* 2. & 3. *Phil. & Mar.* Regis & Reginæ &c. *Midd. ſci.*

Richardus Overton nuper de *London* generoſ. captus octab. *Hillarii* pro quibuſdam altis proditionibus unde indictatus eſt, Ad quem diem capt. 15 *Paſche* exon. craſtina Animarum.

De Termino *Paſche* anno 4 & 5 *Phil. & Mar.* Regis & Reginæ, Et per com. *ro.* ejuſdem *rot.* 45. Turr. *London.*

Edwardus Newport generoſus per *Robertum Oxenbridge* mil. Conſtabularium Turris prædicti, virtute brevis Dom. Regis & Reginæ de *Habeas Corpus* ad ſubjiciendum, &c. Ei inde directum ad Barr. coram Domino Rege & Regina duct. cum cauſa, viz. Quod ipſe ſibi commiſſus fuit per mandatum Conſiliorum Dominæ Reginæ, qui committitur Marreſcallo, &c. et immediate traditur in ballium, prout patet. Et poſtea ſine die per parol. virtute brevis geſtu & fama prout patet rotul. 17. iſtius anni & etiam patet ſuper ballium inter ſcruet iſtius Termini affilat &c.

De Termino ſancti *Michaelis* anno 4 & 5 *Phil.* & *Mar.* Regis & Reginæ & per ſcruet ejuſdem *rot.* 17.

Memorandum, quod 14 die Octobris anno Regnorum Dominorum *Phil* & *Mar.* Regis & Reginæ nunc quarto & quinto, *Edwardus Newport de Hamley* in comitatu *Wigorn.* fuerit ſuppoſitus & ea de cauſa per mandatum Conſiliorum Dominorum Regis & Reginæ, ad Barr. hic ductus fuit, qui committitur Mareſcallo, &c. Et ſuper hoc idem *Edwardus Newport* in ballium *Thomæ Charr*, de *Laton* in comitatu *Eſſex* generoſus *Johanni Baker* Clerico ordinario *London*, *Johanni Gill de* Parochia ſancti *Thomæ Apoſtoli London Clothworker* & *Richardo Parkes*, de *Bromeſgrove* in comitatu *Wigorn Yeoman*, uſque octab. *Hillarii* ubicunque, &c. viz. Quilibet pleg. prædict. ſub pœna 100 l. Et prædictus *Edwardus* ſub pœna 200 l. Quas &c. Ad quem diem committitur Conſtabulario Turris *London* per mandatum Conſiliorum Dominorum Regis & Reginæ ibidem ſalvo cuſtodiri quouſque, &c. Et poſtea 4 & 5 *Phil.* & *Mar.* traditur in ballium, prout patet per ſcruet finium ejuſdem Termini. Et poſtea *Michaelis* 5 *Phil.* & *Mar.* exoneratur per Cur. eo quod tam per ſacrament. duodecim proborum legalium hominum de prædict. com. *Midd.* coram Dom. Rege & Regina hic in curia in ea parte jurat & onerat quam per ſacrament. duodecim proborum & legalium hominum de corpore dicto comitatu *Wigorn* coram *Edwardo Saunders*, & *Johanne Whiddon* Mil. & Juſticiar. Dominorum Regis & Reginæ ad pacem ꝛc diverſis feloniis tranſgreſſionibus & malefactionibus in eodem comitatu perpetrat audiendum & terminandum aſſignat virtute brevis Dominorum Regis & Reginæ eis inde directis in ea parte ſimiliter jurat & onerat, ad inquirendum de geſtu & fama ipſius *Edw.* compert. exiſtit quod idem *Edw* eſt de bonis geſtu & fama. Ideo proclamatio inde facta prout moris eſt ſecundum legem & conſuetudinem Regni Angliæ, &c. Conſideratum eſt, quod prædictus *Edwardus* eat inde ſine die, &c.

Deliberatur per parol.

De Termino *Paſche* anno 9. *Eliz.* Reginæ, *Rot* 35. *London* ſci.

Thomas Lawrence per *Chriſtopherum Draper* Major Civitatis *Londini* ac *Ambroſium Nicholas* & *Richardum Lumbard*, vicecomites ejuſdem civitatis virtute brevis Dominæ Reginæ de *Habeas Corpus* &c. ad proſequendum, &c. eis inde directum. Et coram Domina Regina duct. cum cauſa, viz. quod ſeptimo die *Novembris* anno Regni Dominæ *Elizabethæ*, nunc Reginæ Angliæ octavo *Thom. Lawrence* in dicto breve nominat captus fuit in civitate prædict. & in priſona dict. Dominæ Reginæ ſub cuſtodia prædict. vic. deten. per mandatum Concilii Dominæ Reginæ. Qui committitur Marreſcallo, Et poſtea traditur in ballium prout patet per ſcruet finium iſtius Termini.

Bal. pardon.

De Termino *Paſche* anno 9. *Eliz.* Reginæ, *Rot.* 68. Turr. *London.*

Robertus Conſtable, per *Franciſcum Jobſon* milit. Locum tenent. Turris

ris *London* virtute brevis Dominę Reginæ de *Habeas Corpus*, ei inde direct. & coram Domina Regina duct. cum cauſa, viz. Quod *Robertus Conſtable* præfat. *Franciſc. Jobſon* commiſſus fuit per mandatum privati Concilii Dominæ Reginæ ſalvo cuſtodiri. Qui committitur Marreſcallo, Et poſtea iſto eodem Termino traditur in ballium. *pardon.*

De Termino *Paſche* anno 20. *Elizabethæ* Reginæ et per ſcruet ejuſdem, *Rot.* 72. Turris *London.*

Johannes Browning per *Owinum Hopton*, mil. locum tenentem Turris Reginæ *London*, virtute brevis Dominæ Reginę de *Habeas Corpus* ad ſubjiciendum & recipiendum ei inde direct. Et coram dilectis & fidelibus Juſticiariis dominæ Reginæ ad placita coram nobis tenen. aſſign. apud hoſpitium ſuum in *Sergeants Inne Fleetſtreet London*, die Lunæ, viz. Prædictus *Johannes Browning*, commiſſus fuit eidem loco tenenti per Privatum Concilium Dominę Reginæ, ſalvo cuſtodiend. &c. Qui committitur Marr. Et poſtea iſto eodem Termino traditur in ballium prout patet per ſcruet finium iſtius Termini. *Marr. Ball.*

De Termino ſancti *Hillarii* anno 40. *Elizabethæ* Reginæ, Et per com. rol. ejuſdem, *rot.* 62.

Edwardus Harecourt, per *Hugonem Parlor* Cuſtod. priſonæ Dominæ Reginæ *de le Gatehouſe* infra civitatem *Weſtm.* in comitatu *Midd.* virtute brevis Dominæ Reginæ de *Habeas Corpus* ad ſubjiciendum &c. ei inde directum. Et coram Domina Regina apud *Weſtmonaſterium* duct. cum cauſa viz. quod ante adventum brevis prædict. ſcilicet 7. die *Octobris* anno Regni Dominæ Reginę nunc 39. corpus *Edwardi Harecourt*, per Dominos de privato Concilio ei commiſſus fuit ſalvo et ſecure cuſtodiend. certis de cauſis ipſos moventibus ac ei ignotis, Qui committitur Marreſcallo, & poſtea iſto eodem Termino traditur in ballium prout patet per ſcruet finium iſtius Termini. *Mar. bal.*

De vacatione *Hillarii* anno 43. *Eliz. Reginæ. Fleet*, ſc.

Robertus Catesby per *Johannem Phillips* Gardian de le *Fleet* virtute brevis Dominæ Reginæ de *habeas Corpus* ad ſubjiciendum, &c. ei inde directum, & coram *Edwardo Fenner* uno Juſtitiar. dominæ Reginæ ad placita coram ipſa Regina tenendum aſſignat. apud *VVincheſter houſe* in Burgo de *Southwarke* in comitatu *Surr.* duct. cum cauſa, viz. quod prædictus *Robertus* commiſſus fuit priſonæ prædict. primo die Martii anno 43. Reginæ per warrantum diverſorum prænobilium virorum de privato Concilio Dominæ Reginæ in hæc verba.

To the warden of the *Fleet* or his deputy. Theſe ſhall be to will and require you to receive at the hands of the keeper of the *Compter* of

VVoodſtreet the perſon of *Robert Catesby Eſquire*, and him to retain and keep ſafely in that priſon under your charge untill you ſhall have other direction to the contrary wherein this ſhall be your warrant. Et præfatus *Rob.* commiſſus fuit Marreſcallo per præfatum *Edw. Fennor*, Et ſtatim traditur in Ballium prout patet, &c.

De Termino *Sancti Hillarii* anno 12. *Jacobi* Regis rot. 153.

Ricardus Beckwith generoſus per *Aquilam VVykes*, Cuſtod. priſonę prædict. virtute brevis Domini Regis de *habeas Corpus* ad ſubjiciendum, &c. ei inde direct. & coram Domino Rege apud *VVeſtmonaſterium* duct. cum cauſa, viz. quod ante adventum brevis prædicti, ſcilicet, decimo die Junii, Anno Regni Domini *Jacobi* Regis Dei gra ia *Angliæ*, *Franciæ*, & *Hiberniæ*, fidei defenſor, &c. 11 & *Scotiæ* 47 prædictus *Richardus Beckwith* ſibi commiſſus fuit priſonæ prædictæ ſub cuſtodia ſua virtute brevis & cujuſdam warranti ſibi facti & directi per *Georgium* Divina providentia Archiepiſcopum *Cant.* totius *Angliæ* Primat & Metropolitanum. *Hen* comitem *Northampton*, Dom. Gardianum quinque portuum ac unum de Privato Conſilio Regiæ Majeſtatis, *Thom.* comitem *Suffolciæ*, Dominum Camerarium Regis Familiæ ac è ſacris Conſiliis Regiæ Majeſtatis. *Edward.* dominum *VVotton* Gubernator Regiæ Familiæ & *Johannem* dominum *Stanhope* Vic. Camerar. Regiæ Familiæ cujus warranti tenor ſequitur in hæc verba.

To *Aquila VVykes* keeper of the *Gatehouſe* in *VVeſtminſter*, or his deputie. Whereas it is thought meet, that *Miles Raynard* and *Richard Beckwith* be reſtrained of their Liberty and committed to the priſon of the *Gatehouſe*, Theſe ſhall be to will and require you to receive the perſons of the ſaid *Raynard and Beckwith* into your charge and ſafe keeping in that priſon, there to remain untill you ſhall have further order from us in that behalf, for which this ſhall be your warrant, dated at *VVhitehall* this tenth of *July* 1623. Et hæc eſt cauſa detentionis dicti *Richardi Beckwith* in priſona prædict. Qui committitur Marreſcallo. Et poſtea iſto Termino traditur in ballium, prout patet per ſcruet iſtius Termini.

De Termino Sancti *Mic.* anno 14 *Jacobi* Regis, Et per ſcruet ejuſdem Rot. 147.

Thomas Monſon miles per *Georgium Moore* mil. locum tenent. Turris Domini Regis *London*, virtute brevis Domini Regis de *habeas Corpus*, ad ſubjiciendum, &c. ei inde directi coram Domino Rege apud *Weſtmonaſterium* ductus cum cauſa, viz. quod ante adventum brevis prædicti *Thomas Monſon* ſibi commiſſus fuit per warrantum a diverſis Dominis de privato Concilio Domini Regis ſibi direct. Qui committitur Mareſcallo, & ſuper hoc traditur in ballium prout patet per ſcruet finium iſtius Termini.

De

De Termino Sancti *Mic.* anno 7, *H.* 7. per còm rot. ejuſdem.

Thomas Brugg junior nuper de *Yonington* in comitatu *Hereford*, *Johannes Rawlings* de *Hominſtre* in comitatu prædict. *Robertus Sherman* recuſſ. nuper de eadem in comitatu prædict. *Walber*, *Thomas Hoſier* nuper de eadem in eodem comitatu *Smith. Cadwallader ap Johan.* dux nuper de *Key* in *Marchia Wallie* in comitatu *Salop* adjacend. generoſ. *Reginaldus Sherman* & *Thomas Tanner* nuper de *Kingſton* in comitatu *Hereford*, ſunt in cuſtodia Marr. ad mandatum Domini Regis, ac pro aliis certis cauſis prout patet alibi de Recordo, &c. per Record. iſtius Termini, poſtea iſto Termino Dominus Rex relaxavit mandatum ſuum, & pro recuſſ. prædict. comparuer. Attorn. &c. Et quod ulterius verſus præfatum *Thomam Brugg* revocatur iſto Termino & prædictus *Johannes Rawlings* traditur in ballium prout patet alibi &c. Ideo hic Marr. de eis omnibus per cur. exoneratur, &c.

De Termino ſancti *Hillarii* anno 7. *H.* 7. & per com. ro. ejuſdem, *rot.* 13.

Willielmus Chace, *Henricus Charr*, *Thom. Rolleſter*, *Thomas Street*, *Robertus Feldace* & *Henricus Rand* ſunt in cuſtodia Marr. ad mandatum Domini Regis &c. ac corpus prædict. *Willielmus Chace* pro pace *Radnor Joſelyn* inveniend. &c. *Paſche* ſequen. pet. poſtea Termino ſequen. prædict. Dominus Rex mandatum ſuum prædict. quo ad prædict. *Will. Chace* relaxavit, per Reg. Attorn. & pro pace & pro felonie & murdr. traditur in ballium idem.

De Termino *Paſche* 7. *H.* 7, & per com. ro. ejuſdem *rot.* 18.

Johannes Wyddesbury in comitatu *Staff.* Arm. eſt in cuſtodia Marr. ad mandatum Domini Regis &c. per Record. iſtius Termini poſtea ſcilicet *Trin* 7. *H.* 7 ſequen, prædictus *Johannes Beamond* demandat prædict. per cur. exonerat exiſtit. Ideo Marr. de eo per eandem cur. exoneratur, &c.

De Termino ſancti *Michaelis*, anno 7. *H.* 7. *rot.* 8. *London* ſci.

Thomas Yow nuper de *Villa de Staff.* in comitatu *Staff. yeoman* per *Johan. Shaw* & *Richardum Haddon* vicecom. *Londini*, virtute brevis Domini Regis de *Habeas Corpus*, ad ſectam ipſius Regis eis inde direct. coram Rege duct. cum cauſa, viz. quod idem *Thomas Yow* attach. fuit per *Richard. Whittington Sergeant* apud *Baynards Caſtle* civitate prædict. & priſon. Domini Regis infra eandem civitatem prædictam ſalvo cuſtodiendum, commiſſus pro ſuſpicione feloniæ apud *Coventry* in comitatu *War.* perpetrat. ad ſuggeſtionem *Willielmum King Inhoulder*, Ac in ſuper idem *Thomas Yow* detinetur in priſona prædict. virtute cujuſdam alterius quærelæ verſus ipſum ad ſectam *Johannis Freeman Sergeant* de eo quod inveniat ei ſufficient ſecuritatem pacis in curia coram *Johannem Wynger* nuper

per Vic. Ac ulterius idem *Thom. Yow* detentus eſt in priſona prædict. pro 14 l. debitum & 2 s. 8 d. Et etiam idem *Thomas* detinetur in eadem priſona ad mandatum Domini Regis, Qui committitur Marr. &c. Poſtea ſcilicet Termino ſancti *Trinitatis* anno 19. Regis *Henrici* 7. prædictus *Johannes Freeman* relaxavit ſecuritatem pacis verſus eundem *Thomam Yow*, dictuſque *Robertus Carvell* recognovit ſe fore ſatisfact. de debitis. Ac *Johannes Hubbard* General. Attorn. Domini Regis, nomine ipſius Regis relaxavit mandatum Domini Regis. Et pro ſuſpicione feloniæ prædict. traditur in ballium, *Simon Little de London Taylor*, et *Johannem Aſh de London Skinner*, uſque octab. *Michaelis* ubicunque &c. ad quem diem comparuit, Et *Robertus Throgmorton* miles unius cuſtod. pacis prædict. committitur warrant. retorn. quod nul. indicaverit de aliquibus feloniis ſive tranſgreſſionibus verſus præfatum *Thomam Yow* coram eo & ſociis ſuis direct. per ſacramentum 12 proborum & legalium hominum de viſu de *Coventrey* prædict. de geſtu & fama prædict. *Thom.* diligent. inquiſitione fecerunt nihil de eo præter bonum coram eo & ſociis ſuis eſt compertum ſed eſt de bono geſtu & fama. Ideo conceſſum quod prædictus *Thomas Yow* eat ſine die. &c.

Sine die.

Anno 9. *H.* 7. et per ſcruet ejuſdem *Rot.* 13.

Humfridus Botche, nuper de *Canterbrigg* in comitatu *Cantabrgienſis Scholar* per *Robertum Willoughby* Dom. *Brook*, mil. Seneſcal. hoſpitii Domini Regis, ac *Johannem Digby*, mil. Mareſcall. cur. Mareſc. hoſpitii prædict. virtute brevis Domini Regis de Habeas Corpus, ad ſectam ipſius Regis ad ſtandum rect: &c. ad ſectam pacis ut legatur eis inde direct. coram Rege duct cum cauſa, viz. Quod idem *Humfridus Botche*, commiſſus fuit gaol. Marreſcalli hoſpitii prædict. per mandatum Domini Regis, Et hæc eſt cauſa & non alia, quod idem *Humfridus* in priſona prædicta detinetur. Qui committitur & poſtea *Paſche* ſequen. Dominus Rex relaxavit mandatum ſuum Capital. Juſtitiar. per *Thomam Lovell* mil. oſtenſus et pro ult. præd. tenetur prædict alibi &c.

Marr. ball.

De Termino ſancti *Trinitatis* anno 39. *Elizabethæ* Reginæ & per com. ro. ejuſdem 118. *le Gatehouſe.*

Lawrentius Broom per *Hugonem Parlor* cuſtod. priſonæ Dominę Reginæ de *le Gatehouſe* virtute brevis Dominę Reginæ de *habeas Corpus* ad ſubjiciendum ei inde direct. &c. coram Domina Regina apud *Weſtm.* duct. cum cauſa, viz. quod prædictus *Lawrentius Broom* in arcta cuſtodia ſua remanſit per mandatum Dominorum de Concilio, Sereniſſimæ Dominæ Reginæ pro certis cauſis eos moventibus, Qui committitur Marr. & poſtea iſto eodem Termino traditus fuit in ballium prout patet per ſcruet finium iſtius Termini.

Marr. Ball.

Per

Per ſcruet finium Termini prædicti anno 39. *Eliz.* Reginæ. *Eſſex.*

Lawrentius Broom de parva *Bradowe* in comitatu prædict. *husbandman*, traditur in ballium ad ſubjiciendum, &c. per mandatum privati Concilii Dominæ Reginę ſuper *habeas Corpus*, *Radulpho Mayall* de *Hatfield Penell* prædict. *Henr. Vndall* de eadem gener. *Willielmo Eccleſden* de *Weſtm. Bricklayer*, *Richardo Morgan*, de *Weſtm. Labourer*, uterque pleg. ſub pœna 40 l. & ſub pœna 100 l. Marr. pro ſuſpitione proditionis cum *Johanne Smith* mil. *Uſque octab. Michaelis.*

De Termino ſancti *Michaelis* anno 40 *Elizabethæ* Reginæ, et per com. ro. ejuſdem *rot.* 37. *Midd.* ſci.

Thomas Wenden per *Hugonem Parlor* generoſ. cuſtod. priſonæ Dominæ Reginæ de *le Gatehouſe* virtute brevis Dominæ Reginæ de *habeas Corpus*, ad ſubjiciendum, &c. ei inde direct. & coram Domina Regina apud *Weſtm.* duct. cum cauſa, viz. Quod 18. die Junii anno Regni Dominæ *Elizabethæ* nunc Reginæ Angliæ 38. Corpus infra nominati *Tho. Wenden* extra curiã ejuſdem Dominæ Reginæ Angliæ coram ipſa Dom. & Concilio ſuo in Camera ſtellata priſonæ Dominæ Reginæ de *le Gatehouſe*, ſub cuſtodia ſua pro certis cauſis eiſdem Dominæ Reginæ, & concilio ſuo moventibus & ei ignotis, commiſſus fuit ſalvo cuſtodiend. donec aliud inde habuerit præcept. Et hæc eſt cauſa detentionis, prædict. *Thomæ* in priſona prædict. Qui committitur Marr. &c. Et poſtea iſto eodem Termino traditur in ballium, prout patet per ſcruet finium iſtius Termini. *Marr. ball.*

Per ſcruet finium de Termino ſancti *Michaelis* anno 39. & 40. *Elizabethæ* Reginæ.

Thom. Wenden de *Aldham* in comitatu *Eſſex*, *Yeoman* traditur in ballium ſuper *habeas Corpus* ad ſubjiciendum, & recipiendum. *Mar.*

Johannes Wenden de Colmewalke in comitatu prædict. *yeoman*, *Will. Beriffe* de *Aldham*, prædict. in comitatu prædict. gen. *Radulpho Northen* de *Aldham* in comitatu prædict. *yeoman*, quilibet prædict. ſub pœna 200. Marcis, & pars ſub pœna 200 l. *Uſque octab. Hillar.*

Idem *Thom Wenden* traditus fuit in ballium per conſenſ. Dominorum privati Concilii per Relationem Attorn. Dominæ Reginæ general. ſub R. capt. ſub Terminum poſt craſtin. Martini.

De Termino *Hillarii* anno *Eliz.* Reginæ *Rot.* 89.

Domina Regina mandavit prædilecto & fideli Conciliario ſuo *Johannem Popham* mil. capital. Juſtic. Dominæ Reginæ ad placita coram ipſa Regina tenend. aſſignat. Ac dilectis & fidelibus ſuis *Johanni Clench*

Franciſco Gawdy & *Edwardo Fennor* Juſticiar. ipſius Dominæ Reginæ ad placita prædict. aut eorum alicui breve ſuum de privato Sigillo, manu ſua propria quod ſequitur in hæc verba.

By the Queen.

Truſtie and welbeloved, we greet you well. Whereas *William Conſtable* late of *London* Knight. *Robert Vernon* late of *London* Knight, *Henry Lincey* late of *London* Knight. *Ellis Jones* late of *London* gent. *Charles Ogle* late of *London* gent. *Robert Pitchforke* late of *London* gent. *John Wright* late of *London* gent. *Chriſtopher Wright* late of *London* gent. and *Edmund Whitlocke* late of *London* gent. for the late treaſonable attempt of the late Erle of *Eſſex*, have been committed to ſundry places and priſons, for their offences committed, ſome in one ſort, ſome in another, and ſtand amongſt others indicted of high Treaſon for their ſeverall offences. Foraſmuch as of our princely diſpoſition we are graciouſly bent to extend our grace and favour unto them and that they ſhall be bailed. We will and command you or any of you, to bail the aboue named perſons, or any of them to appear before us in our Court commonly called the *Kings Bench*, at ſuch time, and in ſuch manner and form, as to you or any of you ſhall ſeem meet. And this ſhall be your ſufficient warrant and diſcharge in that behalf.

To our truſty and welbeloved Counceller Sr *John Popham* Knight, Chief Juſtice of our Pleas to be holden before us.

To our truſty and welbeloved *John Clench*, *Francis Gawdy* and *Edward Fennor* Juſtices of the ſame Pleas or any of them.

De Vacatione *Hillarii* anno 43. *Eliz.* Reginę. *Gatehouſe.*

Robertus Vernon nuper de *London* mil. *Henricus Lincey* nuper de *London* mil. & *Carolus Ogle* nuper de *London* generoſ. per *Willielmum Okey*, cuſtod. priſonæ de *le Gatehouſe* virtute brevis Dominę Reginæ de *habeas Corpus* ad ſubjiciendum, &c. Ei inde direct. & coram *Franciſco Gawdy* uno Juſticiar. Dominæ Reginæ ad placita coram ipſa Regina tenend. aſſignat apud hoſpitium ſuum in *Chauncery lane London* duct. cum cauſa, viz. Quod prædictus *Robertus*, *Henricus* & *Carolus* ſibi commiſſi fuerint per mandatum privati Concilii Dominæ Reginæ pro quibuſdam altis proditionibus per ipſos fieri ſuppoſiti. Qui tradunſtur in ballium prætextu brevis, &c.

Mary. Ball.

De Vacatione *Hillarii* 43. *Eliz.* Reginæ *Fleet*, ſci.

Henricus Carew de *London* mil. per *Johannem Phillips* Gardian de *le Fleet*, virtute brevis Dominæ Reginæ de *habeas Corpus* ad ſubjiciendum &c. Ei inde direct. & coram *Franciſco Gawdy* uno Juſticiar. Dominæ Reginæ de placita coram ipſa Regina tenend. aſſign. apud hoſpitium ſuum

ſuum in *Sergeants Inne in Chauncery lane London* duct. cum cauſa, viz. quod prædict. *Henr.* commiſſus fuit priſon. prædict. 11 die Februarii anno 43 Reginæ virtute cujuſdam warranti diverſorum prænobilium virorum de privato Concilio in hæc verba.

Theſe ſhall be to require you to receive into your charge and cuſtody from the hands of the Lord Major of *London* the perſon of Sr *Henry Carew* Knight, who was in the late action of trayterous Rebellion, and to keep him ſafely cloſe priſoner untill you ſhall receive order from us to the contrary. Qui traditur in ballium prætextu brevis, &c.

De Termino ſanctæ *Trinitatis* primo *Jacobi* Regis *rot.* 30.

Johannes Brocket mil. per *Willielmum Okey*, cuſtod. priſonæ de *le Gatehouſe* in *Weſtm.* in comitatu prædict. virtute brevis Domini Regis de *habeas Corpus* ad ſubjiciendum, &c. Ei inde direct & coram Domino Rege apud *Weſtm.* duct. cum cauſa, viz. Quod ante adventum brevis prædict. ſcilicet, ultimo die Martii anno Regni Domini Regis primo prædict. *Johannes Brocket* mil. præfat. cuſtod. de *le Gatehouſe* commiſſus fuit per warrantum privati Concilii Domini Regis cujus tenor ſequitur in hæc verba.

To *Will. Okey* keeper of the priſon of the *Gatehouſe* in *Weſtminſter*.

Theſe are to will and require you to receive into your charge and cuſtody the perſon of *John Brocket* Knight, and him to detain in ſafe keeping under your charge untill you ſhall have further order for his enlargement, whoſe commitment being for ſome ſpeciall matter concerning the ſervice of our Sovereign Lord the King, you may not fail to regard this our warrant accordingly.

From the Kings Pallace at *Whitehall* the laſt of March, 1605.

Eaque fuit cauſa detentionis prædict. *Johannis* in priſona prædict. quia committitur Marr. &c. Et poſtea traditus fuit in ballium prout patet per ſcruet finium iſtius Termini. *Marr. Ball.*

De Termino ſancti *Michaelis* anno 12 *Jacobi* Regis *Rot.* 119. priſon de *le Gatehouſe*. ſci.

Milo Raynor per *Aquilam Wykes* cuſtod. priſonæ prædict. virtute brevis Domini Regis de *habeas Corpus* ad ſubjiciendum &c. coram Domino Rege duct. cum cauſa, viz. Quod ante adventum brevis prædict. ſcilicet decimo die Junii anno Domini 1613. prædict *Milo Raynor* commiſſus fuit priſonæ prædict. & huc uſque detent. virtute warranti cujuſdam ſibi facti & direct. per *Georgium* Archiepiſcopum *Cantuarienſis*, *Henr.* comitem *Northampton Thom.* comitem *Suff. Will.* Dominum *Knollis Edwardum* Dominum *Wotton* & *Richardum* Dominum *Stanhope*, cujus warranti tenor ſequitur in hæc verba.

To *Aquila VVykes* keeper of the *Gatehouſe* in *VVeſtminſter*, or his deputie.

Whereas it is thought meet, that *Miles Raynor* and *Richard Beckwith* be reſtrained of their Liberty and committed to the priſon of the *Gatehouſe*, Theſe ſhall be to will and require you to receive the perſons of the ſaid *Raynor and Beckwith* into your charge and ſafe keeping in that priſon, there to remain untill you have further order in that behalf, for which this ſhall be your ſufficient warrant.

Dated at *VVhitehall* the tenth of *July* 1613.

Et hæc eſt cauſa detentionis ſuæ in priſona prædict. Qui committitur Marreſcallo. Et poſtea iſto eodem Termino traditur in ballium, prout patet per ſcruet iſtius Termini.

Marr. Ball.

De Termino ſancti *Hillarii* anno 4 et 5 *H.* 7. & per ſcruet ejuſdem *Rot.* 18. de prædict.

Richardus Everard nuper de *Colcheſter* in comitatu *Eſſex*. Clericus, & *Robertus White* nuper de *Norwic. Smith*, per *Robertum Willoughby* mil. Dominum de *Brook* Seneſcal. hoſpitii prædict. virtute brevis Domini Regis de *habeas Corpus* ad ſectam ipſius Regis pro quibuſdam proditionibus & feloniis unde in dicto comitatu *Eſſex*. indictati ſunt, ei inde direct. coram Domino Rege duct. cum cauſa, viz. Quod iidem *Richardus Everard* & *Richardus White*, commiſſi fuerint in cuſtodia Marr. prædict. per mandatum Domini Regis. Qui committitur Marr. &c.

Marr.

De Termino ſancti *Hillarii* anno 8. *H.* 7 & per ſcruet ejuſdem *Rot* 12.

Mort. eſt in priſona prout per certificationem *Coron.* intr. *Paſche* 10. *H.* 7. affilat. *Surr.*

Chriſtopherus Burton nuper de *Rocheſter* in comitatu *Kant. hackneyman*, per *Robertum Willoughby* Dominum Brook, militem Seneſcallum hoſpitii Domini Regis, ad *Johan. Digby* mil. Marreſc. cur. Marreſc. hoſpitii prædict. virtute brevis Domini Regis de *habeas Corpus* ad ſectam ipſius Regis, ad ſubjiciend. &c. eis inde direct. coram Domino Rege duct. cum cauſa, viz. Idem *Chriſtopherus* commiſſus fuit gaol. Marreſc. hoſpitii prædict. per mandatum Domini Regis, et hęc de cauſa & non alia, Qui committitur Marreſc. Ac ſuper quendam abjurationem infra civitatem *Rottenſon.* facta iſto Termino certificat ad ſalvo cuſtodiend. ſub pœna 100 l. &c.

Marr.

De Termino *Paſche* anno 29. *H.* 7. & per ſcruet ejuſdem, *rot.* 23. *London* ſci.

Georgius Urſwick de *London Mercer*, per *Oliverum wood*, locum tenent.

nent. priſonæ Domini Regis de *le Fleet* virtute brevis Domini Regis de *habeas Corpus* ad ſectam ipſius Regis ad conſervand. &c. ei inde direct. coram Rege duct. cum cauſa, viz. Quod idem *Georgius Urſwick* tertio decimo die Maii anno 19 Regis commiſſus fuit priſon. de *le Fleet* prædict. per mandatum Domini Regis ſalvo cuſtodiend. ſub pœna 10 l. Qui committitur Marr. &c. *Marr.*

De Termino ſanctæ *Trinitatis* anno 7. *H.* 8. & per ſcruet ejuſdem *rot.* 23. *Surr.*

Edwardus Page nuper de *London* generoſus per *Georgium* comitem *Salopp.* Seneſcallum hoſpitii Domini Regis, & *Henr. Sharnburr* Marr. cur. Marr. hoſpitii prædict. virtute brevis Domini Regis ad conſervand. diem, &c, eis direct & coram Rege duct. cum cauſa, viz. Quod idem *Edwardus* captus & detentus fuit in priſona Marr. prædict. per mandatum Domini Regis ibid. ſalvo cuſtodiend. &c. Qui committitur Marr. hoſpitii Domini Regis. *Marr.*

De Termino ſancti *Michaelis* anno 8 *Jacobi* Regis & per Scr. ejuſdem *rot.* 99.

Thomas Ceſar per *Thomam Vavaſor* mil. Marr. Marreſc hoſpitii Domini Regis, ac Marr & Marreſc. hoſpitii virtute brevis Domini Regis de *habeas Corpus* ad ſubjiciendum, ei direct. & coram Domino Rege apud *Weſtm.* duct. cum cauſa, viz. Quod ante adventum brevis prædict. ſcilicet, decimo octavo die Julii anno Regni dict. Domini Regis nunc Angliæ &c. ſeptimo *Tho. Ceſar* in breve præd. nominatus captus fuit apud *whitehall* in comitatu *Midd.* per ſpeciale mandatum Domini Regis & per eundem Dominum Regem ad tunc & ibidem ſalvo cuſtodiend. quouſque &c. Et ea fuit cauſa captionis & detentionis ejuſdem *Thom Ceſar.* Qui remittitur priſon prædict. *Remitt.*

De Termino ſancti *Michaelis*, anno 8 *Jacobi* Regis die Martis proxime poſt quindena Martini.

Niſi prædict Seneſcall. & Marr. hoſpitii Dom. Regis ſufficienter return. breve de *habeas Corpus Thom. Ceſar*, die Martis proxime poſt quindena Martini defend. exonerabitur per curiam.

De Termino ſancti *Hillarii* anno Regni *Jacobi* Regis 12. *rot.* 153.

Jacobus Demetrius, *Edwardus Emerſon*, *Georgius Brookſhaw* & *Will. Stephens*, per *Thomam Vavaſor* mil. Marr. Mareſc. hoſpitii Domini Regis virtute brevis de *habeas Corpus* ad ſubjiciendum & recipiendum, &c. ei inde direct. & coram Domino Rege apud *Weſtmonaſt*, duct. cum cauſa, viz. Quod ante adventum brevis prædict. ſcilicet. 22. die Januarii anno Regni Domini noſtri *Jacobi* Dei gratia Angliæ Franciæ, & Hiberniæ &c. 12 & Scotiæ 48, prędictus *Jacobus Demetrius Edwardus*

Emerſon, Georgius Brookshaw & *Willielmus Stephens* in breve huic Schedul. annex. nominati fuerunt Commiſſ. Gaol. Marreſc. hoſpitii Domini Regis pro cauſis ipſum Regem & ſervitium ſuum tangentibus & concernentibus. Et hæc eſt cauſa captionis prædict. *Jac. Emerſon, Georg.* & *Will.* & poſtea immediate remittitur præfat. Marr. hoſpitii prædict.

Remittitur.

De Termino ſancti *Hillarii* anno 12 *Jacobi* Regis.

Samuel Saltonſtall per *Johannem Wilkenſon* Ar. Gardian. priſon. de le *Fleet*, virtute brevis Domini Regis de *habeas Corpus* ad ſubjiciendum, &c. ei inde direct. & coram Domino Rege apud *Weſtm.* duct. cum cauſa, viz. Quod idem *Samuel* commiſſus fuit priſonæ prædict. virtute warranti à Dominis de Privato Concilio Domini Regis undecimo die Martii 1608. & quod detentus fuit etiam idem *Samuel* in priſona prædict. virtute cujuſdam ordinis in curia Canc. Domini Regis fact. cujus ordinis tenor patet per rot. record. iſtius Termini. Ad quem diem prædict. *Samuel* remittitur priſonæ prædict. et ſecund. dies proxim. poſt Term. dat. eſt præfat. gardiano priſonæ prædict. ad emend. return. ſuum ſufficient. ſuper breve prædict. de *habeas Corpus* & return. quod prædict. *Samuel* commiſſus fuit priſonę prædict. undecimo die Martii 1608. per warrant. a Dominis de Privato Concilio dict. Domini Regis apud *Whitehall* tunc ſeden. Et quod poſtea undecimo die Februarii anno 1610. commiſſus fuit extra cur. Concil. Domini Regis apud *Weſtm.* pro contemptu ſuo, & quod tent. fuit etiam idem *Sam.* in priſona prædict. per mandatum Dom. Concilii. iterum remittitur priſonæ prædict. & ulterius dies dat. eſt præfat. Gardian. ad emend. return. ſuum ſuper *habeas Corpus*, verſus defend. prout ſtare voluer. uſque diem Jovis proxim. poſt menſem *Paſche* tunc ad habendum corpus, &c. Ad quem diem præfat. Gardian. habuit corpus hic in curia, & return. ſuper *habeas Corpus* quod prædict. *Samuel* commiſſus fuit priſonæ prædict. 11 Martii anno 1608. virtute cujuſdam warranti a Dominis de privato Concilio Domini Regis tunc ſeden. apud *whitehall*. Et quod etiam commiſſus fuit idem *Samuel* priſonæ prędict. 11 die Februarii anno 8 *Jacobi* Regis per cur. Canc. dict. Domini Regis apud *Weſtm.* tunc exiſten. pro quodam contemptu per eundem *Samuel* in cur. prædict. illat. & perpetrat. ibidem proinde ſalvo cuſtodiend. Qui remittitur priſonæ prædict.

Remittitur.

De Termino ſanctæ *Trinitatis* anno 8 *Jacobi* Regis & per ſcr. ejuſdem *rot.* 71.

Samuel Saltonſtal mil. per *Johannem Wilkinſon* Ar. Gardian. priſon. de le *Fleet*, virtute brevis Domini Regis de *habeas Corpus* ad ſubjiciendum recipiendum, &c. ei inde direct. & coram Domino Rege apud *Weſtm.* duct. cum cauſa, viz. Quod prædictus *Samuel Saltonſtall* commiſſus fuit priſonæ prædict. 11 die Martii anno Domini 1608. anno Regni Domi-

ni

ni *Jacobi* Regis Angliæ *6.* virtute cujusdam warr. a Dominis de Privato Concilio dict· Domini Regis tunc seden. apud *Whitehall* commissus fuit etiam idem *Samuel Saltonstall.* mil. prisonæ prædict. 12. die Februarii anno 1610. & anno Regni Domini *Jac.* nunc Regis Angliæ &c. 8 per considerationem cur. Canc. dict. Domini Regis apud *VVestm.* pro contemptu eidem Cur. ad tunc per prædict. *Samuel* illat. ibidem prout inde salvo custodiend. Et hæc sunt causæ captionis & detentionis prędict cujusdam tamen Corpus ad diem & locum infra content. *Remittitur.* parat. habeo prout mihi præcipitur.

Sr Edward Coke.

RESolved upon question, that no Free-man ought to be committed or detained in prison or otherwise restrained by the command of the King, or the Privie Councell, or any other unlesse some cause of the commitment, detainer, or restraint be expressed, for which by Law he ought to be committed, detained, or restrained.

That the Writ of *Habeas Corpus* may not be denyed but ought to be granted to every Free-man that is committed, or detained in prison or otherwise restrained, though it be by Command of the King, the Privie Counsel, or any other he praying the same.

That if a Free-man be committed or detained in prison, or otherwise restrained by the Command of the King, or the Privy Counsel, or any other, no cause of such commitment, detainer or restraint being expressed, for which by Law he ought to be committed detained or restrained, and the same returned upon a *Habeas Corpus* granted for the same partie, that then he ought to be delivered or bailed. All this without one negative.

That these Acts of Parliament and these judiciall Presidents in affirmance thereof recited by Colleagues are but declarations of the fundamentall Lawes of this Realm, I shall prove by manifest reasons, legall reasons which are the grounds and Mothers of all Lawes.

First generall reason. The first generall reason is drawn *à re ipsa* from imprisonment, *ex visceribus causæ*, be it close or other imprisonment, which is divided into three parts,

First, No man can be imprisoned at the will and pleasure of any, but he that is bond, and a villain, for that imprisonment at will *Et Tayler lug haut et base* are *propria quarto modo* to villaines. *Vide* the writ *de nativo habendo.*

Second, But if Free-men of *England* might be imprisoned at the will and pleasure of the King, by his Command, then were they in worse case then bondmen and villaines, for the Lord of a villain cannot command another to imprison his villain without *7. E. 3. fo. 50.* in the new print and 348 in the old. *33 E. 3. tit. Dom. 253. infant in pris. Fitz. Herbert fait un note de Ceo.*

cause

cauſe, as of diſobedience or refuſing toſerve as is agreed in our books.

Third, Impriſonment is accounted in Law civil death, *perdit domum familiam vicinos patriam*, his houſe, his family, his wife, his children, his neighbours, his countrey, and to live among wretched and wicked men.

39.H.1.65.&c. If a man be threatned to be killed, he may avoid a Feoffment of lands gifts of goods &c. ſo it is if he be threatned to be impriſoned he ſhould do the like, for that it is civill death.

Second generall reaſon. The ſecond generall reaſon is *à minore ad majus minima pœna corporalis eſt major qualibet pecuniaria* But the King himſelf cannot impoſe a fyne upon any man but it muſt be done judicially by his Judges, *per Juſticiarios in Curia, non per Regem in Camera*, and ſo it hath been reſolved by all the Judges of *England*.

Bracton fol. 105. it is called duritia impriſonment.

2 R. 3. 11.

Third generall reaſon. The third generall reaſon is drawn from the number and diverſity of remedies which the Law giveth againſt impriſonment. viz. *breve de homine replegiando, de odio & acia* de *habeas Corpus* an appeal of impriſonment, *& breve de manucaptione*. The latter two of theſe are antiquated, but the writ *de odio & acia* is revived, for that was given by the ſtatute of *Magna Charta, ca.* 26. and therefore though it were repealed by the ſtatute of 28. *E.* 3. yet it is revived 42. *E.* 3. *ca.* 1. by which it is provided that all ſtatutes made againſt *Magna Charta* are void. Now the law would never have given ſo many remedies if the Free-men of *England* might be impriſoned at free will and pleaſure.

Vide W. 2. ca. 29.

Fourth generall reaſon. The fourth generall reaſon is drawn from the extent and univerſality of the pretended power to impriſon, for it ſhould extend not only to the Commons of the Realm and their poſterity, but alſo to the Nobles, and their honourable Progenies, to the Biſhops and Clergie and their ſucceſſours: to all perſons of what condition, or ſex, or age ſoever, to all Judges Officers, &c. whoſe attendance are neceſſary, &c. without exception of any perſon.

Fifth generall reaſon. The fifth is drawn from the indefinitneſſe of time, the pretended power being limited to no time may be perpetuall during life.

Sixth generall reaſon. The ſixth *à damno & dedecore* from the loſſe and diſhonour of the Engliſh Nation in 2 reſpects.

Firſt for their valour and proweſſe ſo famous through the whole world.

Secondly, for their induſtry, for who indeavours to apply himſelf in any profeſſion either of warre, liberall ſcience, or merchandiſe, &c. if he be but Tennant at will of his Liberty. And no Tennant at will, will ſupport or improve any thing becauſe he hath no certain eſtate. And thus it ſhould be both *dedecus* and *damnum* to the Engliſh Nation, and it ſhould be no honour to the King to be King of ſlaves.

Seventh generall reaſon. The ſeventh is drawn *ab utili & inutili* for that

that it appeareth by the ſtatute of 36. *E.*3. That the execution of the ſtatute of *Magna Charta* 5. *E.* 3. 25. *E.* 3. are adjudged in Parliament to be for the profit of the King and of his people. And therefore this pretended power being againſt the profit of the King and of his people can be no more part of this prerogative.

Rot. Parl. 16. *E.* 3. *num.* 9. & 20.

Eighth generall reaſon. The eighth generall reaſon is drawn *à tuto* for it is ſafe for the King to expreſſe the cauſe of the commitment, and dangerous for him to omit it, for if any be committed without expreſſing the cauſe, though he eſcape albeit the truth be it were for treaſon or felony, yet the eſcape is neither felony nor treaſon. But if the cauſe be expreſſed to be for ſuſpition of treaſon or felony then the eſcape albeit he be innocent is treaſon or felony.

1. *E.* 2. *de franq. priſon. ſtat. unt. paſche* 18. *E.* 3. *rot.* 33. *coram Rege* Bildeſtons caſe, *rot. Parl.* 28. *H.* 6. *nu.* 16. Acts Apoſt. *cap.* 25. *v.* the laſt.

Ninth generall reaſon. The ninth generall reaſon is drawn from the authorities 16. *H.* 6. *tit. Monſtrans de faits*, 182. by the whole Court, the King in his preſence cannot command one to be arreſted, but an action of falſe impriſonment lieth againſt him that arreſteth, 22. *H.* 6. 46. *Newton* 1. *H.* 7. 4. the opinion of *Markham* Chief Juſtice to *E* 4. and the reaſon becauſe the party hath no remedy.

Forteſcue cap. 18. *proprio ore nullus Regum uſus eſt &c.* to commit any man, &c. 4. *Eliz. Plowd Com.* 236. the common Common Law hath ſo admeaſured the Kings prerogative as he cannot prejudice any man in his inheritance, and the greateſt inheritance a man hath, is the Liberty of his perſon for all other are neceſſary to it. *Major hæreditas venit unicuique noſtrum à jure & legibus quam à parentibus* 25. *E.* 1. *ca.* 2. *Confirm. Cart.* all judgements given againſt *Magna Charta* are void.

Objections.

Upon Conference with the Lords the objections were made by the Kings Attorney.

Firſt object. That theſe reſolutions of the Houſe were incompatible with a Monarchy that muſt govern by the ſtate.

Bracton Anſw. Whereunto it was anſwered, that *nihil tam proprium eſt imperii, quam legibus vivere.* And again, *Attribuat Rex legi, quod lex attribuat, &c. viz. dominationem & imperium quia ſine lege non poteſt eſſe Rex* It can be no more prejudice to the King by reaſon of matter of ſtate, for if it be for ſuſpition of treaſon miſpriſion of treaſon or felony, it may be by generall words expreſſed, viz. *pro ſuſpitione proditionis.*

2 object. To blind thoſe that are committed, one cauſe muſt be pretended and another intended, eſpecially when it toucheth matter of ſtate.

Anſw. Whereunto it was anſwered that all diſſimulation eſpecially in the courſe of Juſtice was to be avoided, and ſoundneſſe of truth to take place, and therefore *David* that was both a King and a Prophet prayed to Almighty God againſt diſſimulation in theſe words. *Lord ſend me a ſound heart in thy ſtatutes, that I be not aſhamed,* where ſound in the originall ſignifieth upright without diſſimulation, and ſhame followeth diſſimulation, when the truth is known.

Third object. If a Rebell be attainted in *Ireland*, and his children for safety and for matter of state be kept in the Tower, what shall be returned upon the *Habeas Corpus*?

Whereunto It was answered. First, that their imprisonment might be justified if they could not find good sureties for their good behaviour.

Secondly, It was charity to find them meat drink and apparell that by the Attainder of their father had nothing.

Fourth object. Though his *Majesty* expresseth no cause, yet it must be intended that there was a just cause.

Answ. *De non apparentibus & de non existentibus eadem ratio.*

Fifth object. First, The King in stead of gold or silver may make money currant of any base metall.

Secondly, He may make warres at his pleasure.

Thirdly, He may pardon whom he will.

Fourthly, He may make denizens as many as he will, and these were said to be greater priviledges then this in question.

Answ. To the first it is denyed, that the King may make money currant of base metal, but it ought to be gold or silver.

Secondly, It was answered admitting the King might do it, his losse and charge was more then of his Subjects, both in the case of money and in the case of warre. The pardon was private out of grace, and no man had dammage or losse by it, & so of the making of denizens, the King was only the looser viz. to have single custome where he had double.

Thirdly, it was a *non sequitur* The King may do these things, *ergo* he may imprison at will.

Your Lordships are advised by them that cannot be daunted by fear, nor misled by affection, reward, or hope of preferment, that is, of the dead.

By ancient and many Acts of Parliament in the point, besides, *Magna Charta* which hath been 30 times confirmed and commanded to be put in execution, wherein the Kings of *England* have thirty times given their Royall assent.

Secondly, Judiciall Presidents per *vividas rationes* manifest and apparant reasons, we in the house of Commons have upon great studie and serious consideration made a grand *manifesto* unanimously *nullo contradicente* concerning this great Liberty of the subject, and have vindicated and recovered the body of this fundamentall Liberty both of your Lordships & of our selves from shadowes which some time of the day are long, sometimes short, and sometimes long again, and therefore no Judges are to be led by them. Your Lordships are involved in the same danger, and therefore *ex congruo & condigno* we desire a conference to the end, your Lordships might make the like declaration as we have done, *Commune periculum communem requirit Auxilium*, and thereupon take such further course as may secure your Lordships and us, and all your and our posterities in enjoying of our ancient undoubted and fundamentall Liberties.

The Argument of Sergeant Bramſton *upon the* Habeas corpus.

MAy it pleaſe your Lordſhip to hear the return read, or ſhall I open it?

Chief Juſtice Hide.

Let it be read.

Mr. *Keeling* read the return, being the ſame as that of Sir *Thomas Darnell.*

May it pleaſe your Lordſhip, I ſhall humbly move upon this return in the behalf of Sir *John Henningham* with whom I am of Councell; it is his petition that he may be bailed from his impriſonment, it was but in vain for me to move that to a Court of Law which by Law cannot be granted: and therefore in that regard, that upon his return it will be queſtioned whether as this return is made, the Gent. may be bailed or not; I ſhall humbly offer up to your Lordſhip the caſe, and ſome reaſons out of mine underſtanding, ariſing out of the return it ſelf, to ſatisfie your Lordſhip that theſe Priſoners may and as their caſe is, ought to be bailed by your Lordſhip.

The exception that I take to this return, is as well to the matter and ſubſtance of the return, as to the manner and legall form thereof; the exceptions that I take to the matter is in ſeverall reſpects.

That the return is too generall, there is no ſufficient cauſe ſhewn in ſpeciall or in generall of the commitment of this Gentleman; and as it is inſufficient for the cauſe, ſo alſo in the time of the firſt impriſonment, for howſoever here doth appear a time upon the ſecond warrant from the Lords of the Councell to detain him ſtill in priſon, yet by the return no time can appear when he was firſt impriſoned, though it be neceſſary it ſhould be ſhewen, and if that time appear not, there is no cauſe your Lordſhip ſhould remand him, and conſequently he is to be delivered.

Touching the matter of the return, which is the cauſe of his impriſonment, It is expreſſed to be *Per ſpeciale mandatum domini Regis*: This is too generall and uncertain, for that it is not manifeſt what kind of command this was.

Touching the Legall form of the return, it is not as it ought to be fully and poſitively the return of the Keeper himſelf onely, but it comes with a *ſignificavit* or *prout* that he was committed *Per ſpeciale mandatum domini Regis*, as appeareth by warrant from the Lords of the Councell, not of the King himſelf, and that is not good in legall form.

For the matter and ſubſtance of the return it is not good, becauſe there ought to be a cauſe of that impriſonment.

This writ is the means, and the onely means that the ſubject hath in this and ſuch like caſe to obtain his liberty; there are other writs by which men are delivered from reſtraint, as that *de homine replegiando*, but extends not to this cauſe, for it is particularly excepted in the body of the writ *de manucaptione & de cantione admittenda*, but they lie in other caſes; but the writ of *Habeas corpus* is the onely means the ſubject hath to obtain his liberty, and the end of this writ is to return the cauſe of the impriſonment, that it may be examined in this Court whether the parties ought to be diſcharged or not, but that cannot be done upon this return, for the cauſe of the impriſonment of this Gentleman at firſt is ſo farre from appearing particularly by it that their is no cauſe at all expreſſed in it.

This writ requires that the cauſe of the impriſonment ſhould be returned, & if the cauſe be not ſpecially certified by it, yet ſhould it at the laſt be ſhewn in generall, that it may appear to the Judges of the Court, and it muſt be expreſſed ſo farre as that it may appear to be none of thoſe cauſes for which by the Law of the Kingdome the ſubject ought not to be impriſoned, and it ought to be expreſſed that it was by preſentment or indictment, and not upon petition or ſuggeſtion made to the King and Lords, which is againſt the ſtatute made in the 25 *Ed.* 3. *c.* 4. 42 *E.* 3. *c.* 3.

By the Statute 25 *Ed.* 3. *cap.* 4. It is ordained and eſtabliſhed, that no man from henceforth ſhall be taken by petition or ſuggeſtion made to the King or his Councell, but by indictment or courſe of Law; and acordingly it was enacted, 42 *E.* 3. *c.* 3. the title of which ſtatute is, None ſhall be put to anſwer an accuſation made to the King without preſentment. Then my Lord, it being ſo, although the cauſe ſhould not need to be expreſſed in ſuch manner as that it may appear to be none of theſe cauſes mentioned in the ſtatute, or elſe the Subject by this return loſeth the benefit and advantage of theſe Laws, which be their birthright and inheritance; but in this return there is no cauſe at all appearing of the firſt commitment, and therefore it is plain that there is no cauſe for your Lordſhip to remand him: but there is no cauſe you ſhould deliver him, ſince the writ is to bring the body and the cauſe of the impriſonment before your Lordſhip.

But it may be objected, that this writ of *Habeas Corpus* doth not demand the cauſe of the firſt commitment, but of the detaining onely; and ſo the writ is ſatisfied by the return, for though it ſhew no cauſe of the firſt commitment, but of detaining onely, yet it declareth a cauſe why the Gentleman is detained in priſon; this is no anſwer, nor can give any ſatisfaction for the reaſon why the cauſe is to be returned is for the Subjects liberty, that if it ſhall appear a good and ſufficient cauſe to your Lordſhip, then to be remanded; if your Lordſhip think and finde it inſufficient, he is to be enlarged.

This

This is the end of this writ, and this cannot appear to your Lordſhip, unleſſe the time of the firſt commitment be expreſſed in the return. I know that in ſome caſes the time is not materiall, as when the cauſe of the commitment is (and that ſo eſpecially) returned, as that the time is not materiall, it is enough to ſhew the cauſe without the time, as after a conviction or triall had by Law; But when it is in this manner, that the time is the matter it ſelf: for intend what cauſe you will of the commitment, yea though for the higheſt cauſe of treaſon, there is no doubt but that upon the return thereof the time of it muſt appear; for it being before triall and conviction had by Law, it is but an accuſation, and he that is onely accuſed, and the accuſation ought by Law to be let to bail.

But I beſeech your Lordſhip to obſerve the conſequence of this Cauſe. If the Law be that upon this return this Gentleman ſhould be remanded, I will not diſpute whether or no, a man may be impriſoned before he be convicted according to the Law: but if this return ſhall be good, then his impriſonment ſhall not continue on for a time, but for ever: and the Subjects of this Kingdome may be reſtrained of their liberties perpetually, and by Law their can be no remedy for the Subject; and therefore this return cannot ſtand with the Laws of the Realm, or that of *Magna Charta*. Nor with the ſtatute of 28 *Ed.* 3. *ca.* 3. for if a man be not bailable upon this return, they cannot have the benefit of theſe two Laws, which are the inheritance of the Subject.

If your Lordſhip ſhall think this to be a ſufficient cauſe, then it goeth to a perpetuall impriſonment of the ſubject: for in all thoſe cauſes which may concern the Kings Subjects, and are appliable to all times and caſes, we are not to reflect upon the preſent time and government, where juſtice and mercy floweth, but we are to look what may betide us in the time to come, hereafter.

It muſt be agreed on all ſides, that the time of the firſt commitment doth not appear in this return; but by a latter warrant from the Lords of the Councell, there is a time indeed expreſſed for the continuing of him in priſon, and that appeares; but if this ſhall be a good cauſe to remand theſe Gentlemen to priſon, they may lie there this ſeven yeares longer, and ſeven yeares after them, nay all the dayes of their lives. And if they ſue out a writ of *Habeas corpus*, it is but making a new warrant, and they ſhall be remanded, and ſhall never have the advantage of the Laws which are the beſt inheritance of every Subject.

And in *Ed.* 6. *fol.* 36. the Laws are called the great inheritance of every Subject, and the inheritance of inheritances, without which inheritance we have no inheritance.

Theſe are the exceptions I deſire to offer to your Lordſhip, touching the return, for the inſufficiency of the cauſe returned, and the defect of the time of the firſt commitment, which ſhould have been expreſſed.

I will not labour in objections till they be made againſt me, in regard the ſtatute of *Weſtminſter primo* is ſo frequent in every mans mouth, that at the Common Law thoſe men that were committed in four caſes were not repleviſable (*viz.*) thoſe that were taken for the death of a man, or the commandment of the King, or his Juſtices for the foreſt; I ſhall ſpeak ſomething to it, though I intend not to ſpend much time about it, for it toucheth not this Caſe we have in queſtion.

For that is concerning a Caſe of the Common Law, when men are taken by the Kings writs, and not by word of mouth, and it ſhall be ſo expounded, as Maſter *Stamford fol.* 73. yet it is nothing to this Caſe, for if you will take the true meaning of that ſtatute, it extends not at all to this writ of *Habeas corpus*; for the words are plain, they ſhall be repleviſable by the Common writ, that is, by the writ *de homine replegiando*, directed to the Sheriffe to deliver them if they were baileable, but the Caſe is above the Sheriffe, and he is not to be Judge in it, whether the cauſe of the commitment be ſufficient or not, as it appears in *Fitz Herbert, de homine replegiando*, and many other places, and not of the very words of the ſtatute, this is clear, for thereby many other cauſes mentioned, as the death of a man, the commandment of the Juſtices, &c. In which the ſtatute ſaith, men are not repleviſable; but will a man conceive that the meaning is, that they ſhall not be bailed at all, but live in perpetuall impriſonment? I think I ſhall not need to ſpend time, in that it is ſo plain, let me but make one inſtance.

A man is taken *de morte hominis*, he is not baileable by writ, ſaith this ſtatute, that is, by the common writ, there was a common writ for this Caſe, and that was called *de odio & acia*, as appeareth. *Bracton. Coron.* 34. this is the writ intended by the ſtatute, which is a common writ, and not a ſpeciall writ; But my Lord as this writ *de odio & acia* was before this ſtatute, ſo it was afterwards taken away by the ſtatute of 28 *Ed.* 3. *cap.* 9. But before that ſtatute, this writ did lie in the ſpeciall Caſe, as is ſhewn in *Brooks* 9th. Reports, *Powlters* Caſe, and the end of this writ was, that the Subject might not be too long detained in priſon, as till the Juſtices of *Eyre* diſcharged them, ſo that the Law intended not that a man ſhould ſuffer perpetuall impriſonment, for they were very carefull that men ſhould not be kept too long in priſon, which is alſo a Liberty of the Subject; and my Lord, that this Court hath bailed upon a ſuſpicion of high treaſon, I will offer it to your Lordſhip, when I ſhall ſhew you preſidents in theſe caſes of a commitment by the Privy Councell, or by the King himſelf: But before I offer theſe preſidents unto your Lordſhip, of which there be many, I ſhall by your Lordſhips favour ſpeak a little to the next exception, and that is the matter of the return, which I find to be *per ſpeciale mandatum domini Regis* 8. and what is, that it is by this writ there may be ſundry commands by the King, we find a ſpeciall command often in our Books, as in the Statute

ſtatute of *Marlborough cap.* 8. they were impriſoned *Rediſſ.* ſhall not be delivered without the ſpeciall command of our Lord the King, and ſo in *Bracton. De Actionibus*, the laſt chapter, where it appears that the Kings commandment for impriſonments is by ſpeciall writ, ſo by writ again men are to be delivered, for in the caſe of *Rediſs'* or *Poſt Rediſs'*, if it ſhall be removed by a *Certiorare*, is by a ſpeciall writ to deliver parties; ſo that by this appears that by the Kings commandment to impriſon, and to deliver in thoſe caſes, is underſtood this writ, and ſo it may be in this caſe which we have heard.

And this return here is a ſpeciall *Mandatum*, it may be underſtood to be under ſome of the Kings Seals, 42 *Aſs.* and ought to be delivered, and will you make a difference between the Kings command under his ſeal, and his command by word of mouth; what difference there is, I leave it to your Lordſhipsjudgement, but if there be any, it is the more materiall that it ſhould be expreſſed what manner of command it was, which doth not here appear; and therefore it may be the Kings command by writ, or his command under his Seal, or his command by word of mouth alone.

And if of an higher nature, there is none of theſe commands, then the other, doubtleſſe, it is that by writ, or under ſeal, for they are of record, and in theſe the perſon may be bailed, and why not in this? As to the legall forme, admitting there were ſubſtances in the return, yet there wants legall form, for the writ of *Habeas Corpus* is the commandment of the King to the Keeper of the priſons, and thereupon they are to make return both of the body, and of the cauſe of the commitment, and that cauſe is to appear of them who are the immediate Officers. And if he doth it by ſignification from another, that return is defective in Law, and therefore this return cannot be good, for it muſt be from the Officer himſelf, and if the cauſe returned by him be good, it bindes the priſoners.

The warrant of the Lords was but a direction for him, he might have made his return to have been expreſly by the Kings commandment, there was a warrant for it, I ſhall not need to put you caſes of it, for it is not enough that he returns that he was certified that the commitment was by the Kings command, but he muſt of himſelf return this fact as it was done. And now my Lord I ſhall offer to your Lordſhip preſidents of divers kindes, upon commitments by the Lords of the Privy Councel, upon commitments by the ſpeciall command of the King, and upon commitments both by the King & the Lords together. And howſoever I conceive, which I ſubmit to your Lordſhip, that our caſe will not ſtand upon preſidents, but upon the fundamentall Laws and Statutes of this Realm, and though the preſidents look the one way or the other, they are to be brought back unto the Laws by which the Kingdome is governed. In the firſt of *Henry* the eighth, *Rot. Parl.* one *Hariſon* was com-

committed to the *Marſhalſey* by the command of the King, and being removed by *Habeas Corpus* into the Court, the cauſe returned was, that he was committed *per mandatum Domini Regis*, and he was bailed.

In the fortieth of *Elizabeth*, *Thomas Wendon* was committed to the Gatehouſe by the commandment of the Queen, and Lords of the Councell, and being removed by an *Habeas Corpus* upon the generall return, and he was bailed.

In 8 *Jacobi*, one *Cæſar* was committed by the Kings commandment, and this being returned upon his *Habeas Corpus*, upon the examination of this caſe it doth appear that it was over-ruled that the return ſhould be amended, or elſe the priſoner ſhould be delivered.

The preſidents concerning the commitment by the Lords of the Councell, are in effect the ſame with theſe, where the commitment is, by the reaſon why the cauſe of the commitment ſhould not be ſhewn, holds in both caſes, and that is the neceſſity of ſuit, and therefore Maſter *Stamford* makes the command of the King, and that of the Lords of the Privy Councell, to be both as one, and to this purpoſe, if they ſpeak, he ſpeaks, and if he ſpeaks, they ſpeak.

The preſidents that we can ſhew you how the Subject hath been delivered upon commitment by the Lords of the Councell, as in the time of *Henry* the eight, as in the times of Queen *Elizabeth*, Queen *Mary*, are infinite: as in the ninth of *Elizabeth*, *Thomas Lawrence* was committed to the Towre by the Lords of the Councell, and bailed upon an *Habeas Corpus*.

In the 43 of *Elizabeth*, *Calvins* caſe.

In the third of *Elizabeth*, *Vernons* caſe.

Theſe were committed for high treaſon, and yet bailed, for in all theſe caſes there muſt be a conviction in due time, or a deliverance by Law.

There be divers other preſidents that might be ſhewn to your Lordſhip. In 12 *Jacobi*, *Miles Renards*. In 12 *Jacobi*, *Rot.* 155. *Richard Beckwiths* caſe. In 4 *Jacobi*, Sir *Thomas Monſon* was committed for treaſon to the Towre of *London*, and afterwards was brought hither, and bailed, and ſince our caſe ſtands upon this return, and yet there is no ſufficient cauſe in Law expreſſed in the return of the detaining this Gentleman; and ſince theſe preſidents do warrant our proceedings, my humble ſuit unto this Court is, that the Gentleman Sir *John Hennigham*, who hath petitioned his Majeſty, that he may have the benefit of the Law, and his Majeſty hath ſignified it, it is his pleaſure that juſtice accord-

according to the Law ſhould be adminiſtred at all times in generall to all his Subjects, and particularly to theſe Gentlemen which is their birth-right: My humble ſuit to your Lordſhip is, that theſe Gentlemen may have the benefit of that Law, and be delivered from their impriſonment.

The Argument of Maſter Noye *upon the* Habeas corpus.

May it pleaſe your Lordſhip, I am of Councell with Sir *Walter Earl*, one of the priſoners at the Barre; the return of this writ is as thoſe that have been before, they are much of one tenour, and as you have heard the tenour of that, ſo this Gentleman coming hither by an *Habeas Corpus*, I will by your Lordſhips favour read the writ.

Carolus Dei Gratia &c, Johanni Lylo Milit' Guardian' Priſon' noſtræ de le Fleet *Salut' Præcipimus tibi quod corpus* Walteri Earl *Milit' in priſon' noſtra ſub cuſtodia tua detent' ut dicit una cum cauſa detentionis ſuæ quocunque nomine prædict'* Walter' *cenſeat in eadem Habeas Corpus ad ſubjiciendum & recipiendum ea quæ curia noſtra de eo ad tunc & ibidem ordin' conting' in hac parte & hæc nullatenus omit' periculo incumbent' & habeas tibi hoc breve, Teſt'* Hyde, *apud Weſtminſter quarto die Novembris, Anno* 8.

Executio iſtius brevis patet in quadam ſchedula huic brevi annexat'.

Reſponſ. Johan' Liloe Guardian' Priſon' de le Fleet.

Ego Johannes Lyloe Mil' Guardian' Priſon' domini Regis de le Fleet, Sereniſſimo Domino Regi, apud Weſtminſter' 8. Poſt receptionem hujus brevis quod in hac ſchedula eſt mentionat', Certifico quod Walter Earl *miles, in eodem brevium nominat' detentus eſt in priſona de le Fleet ſub cuſtodia mea prædict' per ſpeciale mandatum domini Regis mihi ſignificatum per VVarrantum duorum & aliorum de Privato Concilio per Honorabiliſſimi dicti Domini Regis, cujus quidem tenor ſequitur in hæc verba.*

Whereas Sir *Walter Earl* Knight, was heretofore committed to your cuſtody, theſe are to will and require you ſtill to detain him, letting you know, that both his firſt commitment, and this direction for the

continuance of him in priſon, were and are by his Majeſties ſpeciall commandment, from *White Hall*, 7 *Novembris*. 1627.

Thomas Coventree C. S.
Henry Mancheſter.
Thomas Suffolk.
Bridgewater.
Kellie.
R. Duneln'.
Thomas Edmunds.
John Cook.
Marlborough.
Pembrook.
Salisbury.
Totnes.
Grandiſon.
Guliel' Bath and Wells.
Robert Nanton.
Richard Weſton.

Humphrey Mayes.

To the Guardian of the Fleet or his Deputy.

Et hæc eſt cauſa detentionis prædict' Walteri Earl *ſub cuſtodia mea in Priſon' prædict'. Attamen corpus ejuſdem* Walteri *coram Domino Rege ad diem & locum prædictum, poſt receptionem brevis prædict' parat' habeo prout iſtud breve in ſe exiget & requiret.*

Reſpon' Johan' Liloe *milit' Guardian' Priſon' de le Fleet.*

My Lord, the firſt *Habeas corpus* bears date the 4 of *November*, then there is an *Alias habeas* bears *Teſte* after that, and the tenour thereof is a command to the Warden of the Fleet, *quod habeas corpus* Walteri Earl *coram nobis ad ſubjiciendum & recipiendum ea qua curia noſtra de eo &c. ordin' conting.* And the Warden of the Fleet he certifies as your Lordſhip have heard; May it pleaſe your Lordſhip, I deſire as before was deſired for the other Gentlemen, that Sir *Walter Earl* may be alſo bailed, if there be no other cauſe of his impriſonment; for if there were a cauſe certified, and that cauſe were not ſufficient to detain him ſtill in priſon, your Lordſhip would bail him, and if a man ſhould be in worſe caſe, when there is no cauſe certified at all, that was very hard.

The writ is, that he ſhould bring the priſoner *coram nobis* before the King, the end of that is *ad ſubjiciendum & recipiendum*; now I conceive that though there be a ſignification of the Kings pleaſure to have this Gentleman impriſoned, yet when the King grants this writ to bring the priſoner hither, *ad ſubjiciendum & recipiendum*, his pleaſure likewiſe is to have the priſoner let go, if by Law he be not chargeable, or otherwiſe to detain him ſtill in priſon, if the caſe ſo require it.

I will put your Lordſhip in mind of a caſe, and it was *Paſch. 9. Ed. 3. M.* 3. I will cite by the *placita*, becauſe my Book is not paged as other Books are, it is in the caſe of a *Ceſſavit*.

In

In that caſe there were two things conſiderable, the one that there was a ſignification of the Kings pleaſure paſt, and that determined with him: the other, that though there was a ſignification of the Kings pleaſure, before which was, yet there comes after that a writ, and that was another ſignification of the Kings pleaſure, that the priſoner ſhould be brought hither *ad ſubjiciendum*, to ſubmit himſelf to puniſhment, if he have deſerved it, or *ad recipiendum*, to receive his enlargement and be delivered, if there be no cauſe of his impriſonment.

And if upon an *Habeas corpus* a cauſe of commitment be certified, that cauſe is to be tried here before your Lordſhip. But if no cauſe be ſhewn, then the proceedings muſt be *ut curia noſtra ad mar' contigerit*, the Court muſt do that which ſtands with Law and Juſtice, and that is to deliver him.

My Lord, I ſhall be bold to move one word more touching this return: I conceive that every Officer to a Court of Juſtice muſt make his return of his own act, or of the act of another, and not what he is certified of by another.

But in this caſe the Warden of the Fleet doth not certifie himſelf, of himſelf, that this Gentleman was commanded to him by the King, but that he was certified by the Lords of the Councill, that it was the Kings pleaſure that he ſhould detain him. But in our caſe the Warden of the Fleet muſt certifie the immediate cauſe, and not the cauſe of the cauſe, as it doth by this return, *Detentus eſt ſub cuſtodia mea per ſpeciale mandatum Domini Regis mihi ſignificatum per Warrantum duorum de Privato Concilio*; that is not the uſe in Law, but he ought to return the primary cauſe, and not the ſubſequent cauſe, as in 32 *Edw.* 3. return, *Rex vicecom'* 87. in a writ *De homine replegiando*, againſt an Abbot, the Sheriffe returns, that he hath ſent to the Bayliffe of the Abbot, and he anſwered him that the party was the Abbots villain, and ſo he cannot deliver him, that is held an inſufficient return, and a new *Alias* was granted, but if the Sheriffe had returned, that the Abbot did certifie him ſo, it had been good, but he muſt not return what is certified him by another.

In one of the preſidents that hath been noted, as that of *Parker*, 22 *Hen.* 8. there the Guardian of the priſon certifies that *Parker detentus eſt ſub cuſtodia mea per mandatum Domini Regis mihi nunciatum per Robertum Pecke*; now our caſe is by the Nunciation of many, but in Law *majus & minus non variant in ſpetione*, the certification of one and of many is of the ſame effect, although in morall underſtending there may be a difference.

Trin. 2. *Ed.* 3. *Rot.* 46. in this Court in 21 *Ed.* 3. in the printed Book there is a piece of it: The Abbot of *Burey* brings a prohibition out of this Court, the Biſhop of *Norwich* pleadeth in Barre of that *Quod*

mihi teſtificatũ, quod continetur in Archivis, that he is excommunicated; there were two exceptions taken to this caſe in this preſident, and they are both in one caſe, the firſt was, that no caſe appeareth, why he was excommunicated: there may be cauſes why he ſhould be excommunicated, and then he ſhould be barred, and there may be cauſes why the excommunication ſhould not barre him: for it may be the excomunication was for bringing the action, which was the Kings writ, and therefore becauſe there was no cauſe of the excommunication returned, it was ruled that it was not good. The other reaſon is that upon the Roll, which is *mihi teſtificatum*.

Now every man when he will make a certificate to the Court, *Proprium factum ſuum non alterius ſignificare debet*, he muſt inform the Court of the immediate act done, and not that ſuch things are told him, or that ſuch things are ſignified unto him, but that was not done in this caſe, and therefore it was held inſufficient: and ſo in this caſe of ours, I conceive the return is inſufficient in the form, there is another cauſe my Lord, for which I conceive this return is not good.

But firſt I will be bold to inform your Lordſhip touching the Statute of *Magna Charta* 29. *Nullus liber homo capiatur vel impriſonetur &c. nec ſuper eum mittimus niſi per legale judicium parium ſuorum vel per legem terræ.*

That in this Statute theſe words *in Carcerem* are omitted out of the printed Books: for it ſhould be *nec eum in Carcerem mittimus*. For theſe words *per legem terræ*; what *Lex terræ* ſhould be, I will not take upon me to expound, otherwiſe then I finde them to be expounded by Acts of Parliament; and this is that they are underſtood to be the proceſſe of the Law, ſometimes by writ, ſometimes by attachment of the perſon: but whether *ſpeciale mandatum Domini Regis* be intended by that or no, I leave it to your Lordſhips expoſition upon two petitions of the Commons, and anſwer of the King, in 36 *Ed.* 3. *n°* 9. and *n°* 20.

In the firſt of them the Commons complain that the great Charter, the Charter of the Forreſt, and other Statutes were broken, and they deſire that for the good of himſelf and of his people, they might be kept and put in execution, and that they might not be infringed by making an arreſt by ſpeciall command or otherwiſe: and the anſwer was, that the aſſent of the Lords eſtabliſhed and ordained, that the ſaid Charter and other Statutes ſhould be put in execution according to the petition, and that is without any diſturbance by arreſt by ſpeciall command or otherwiſe, for it was granted, as it was petitioned.

In the ſame year, for they were very carefull of this matter, and it was neceſſary it ſhould be ſo, for it was then an uſuall thing to take men by writs *quibuſdam de cauſis*, and many of theſe words cauſed many Acts of Parliament: and it may be ſome of theſe writs may be ſhewn, and I ſay in the ſame year they complained that men were impriſoned by

by ſpeciall command, and without indictment or other legall courſe of Law, and they deſired that thing may not be done upon men by ſpeciall command againſt the great Charter.

The King makes anſwer that he is well pleaſed therewith: that was the firſt anſwer; and for the future he hath added farther, if any man be grieved let him complain, and right ſhall be done unto him. This my Lord is an explanation of the great Charter, as alſo the Statute of 37 *Ed. 3. ch*, 18. is a commentary upon it, that men ſhould not be committed upon ſuggeſtion made to the King, without due proofs of Law againſt them, and ſo it is enacted twice in one year.

We find more printed Books, as in *Henry* the ſixth, *Minus de facts*, *Fitz.* 182. which is a ſtrong caſe: under favour in an action of Treſpaſſe for cutting down trees: the defendant ſaith, that the place where the trees are cut, is parcell of the Manor of *B*, whereof the King is ſeiſed in fee, and that the King did command him to cut them: and the opinion of the Court was, that this was no good plea, without ſhewing the ſpecialty of the command, and they ſaid, if the King command me to arreſt a man, and I arreſt him, he ſhall have an action of falſe impriſonment againſt me, although it were done in the Kings preſence.

In 1 *Joh. cap.* 7. *fol.* 46. it is in print, and there we leave it.

Huſſey Chief Juſtice ſaith, that Sir *John Markham* told King *Edward* the fourth, that he could not arreſt a man upon ſuſpition of felony or treaſon, as any of his Subjects might, becauſe if he ſhould wrong a man by ſuch arreſt, the parties could have no remedy againſt him, if any man ſhall ſtand upon it; here is a ſignification of the Kings pleaſure, not to have the cauſe of the commitment examined, he hath here another ſignification of his pleaſure by writ, whereby the party is brought hither *ad ſubjiciendum & recipiendum*, that he hath made your Lordſhip Judge of that, that ſhould be objected againſt this Gentleman, and either to puniſh him, or to deliver him, and if here be no cauſe ſhewn, it is to be intended that the party is to be delivered, and that it is the Kings pleaſure it ſhould be ſo, and the writ is a ſufficient warrant for the doing of it, there being no cauſe ſhewn of the impriſonment; and now my Lord I will ſpeak a word to the writ of *de homine replegiando*, and no other writ, for that was the common writ, and the four cauſes expreſſed in that Statue, to wit, the death of a man, the command of the King or his Juſtices, or Forreſt, were excepted in that writ before that Statute made, as appears *Bracton* 133. ſo that the writ was at the Common Law before that Statute.

And it appears by our Books, that if a man be brought hither by an *Habeas corpus*, though he were impriſoned *De morte hominis*, as in the 21 of *Edward* the fourth 7. *Winkfield* was bailed here, this Court bailed him, for he was brought hither *ad ſubjiciendum & recipiendum*,

and not to lie in prison God knows how long; and if the Statute should be expounded otherwise, there were no bailing men outlawed or breakers of prisons, for they are not within this Statute, and yet this Court doth it at pleasure.

But plainly by the Statute it self, it appears that it meant only to the common writ, for the preamble recites, that the Sheriffs and other, have taken and kept in prison persons detected of felony, and let out to plevin such as were not repriſable to grieve the one party, and to the gain of the other; and forasmuch as before this time it was not determined what prisoners were repriſable, which not, but onely in certain cases were expressed, therefore it is ordained, &c.

Now this is no more but for direction of the keepers of the prisons, for it leaves the matter to the discretion of the Judges, whether bailable or no, not of the Judges, for when the Statute hath declared who are repleviable, who are not, as men outlawed have abjured the Realm: Proves such as be taken in the manner, breakers of prisons, burners of houses, makers of false money, counterfeiting of the Kings Seal, and the like, it is then ordained, that if the Sheriff or any other, let any go at large by surety, that is not repriſable, if he be Sheriff, Constable, or any other that hath the keeping of prisons, and thereof be attainted, he shall lose his office and fee for ever, so that it extends to the common Goalers and keepers of prisons, to direct them in what cases they shall let men to bail, and in what cases not: and that they shall not be Judges to whom to let to replevin, and whom to keep in prison, but it extends not to the Judges, for if the makers of the Statute had meant them in it, they should have put a pain upon them also.

So then, I conclude upon these under your Lordships favour, that as this case is, there should have been a cause of the commitment expressed, for these Gentlemen are brought hither by writ *ad subjiciendum*, if they be charged, and *ad recipiendum*, if they be not charged, and therefore in regard there is no charge against them whereupon they should be detained in prison any longer; we desire that they may be bailed or discharged by your Lordship.

The Argument of Master Selden *upon the* Habeas corpus.

My Lords, I am of Councell with Sir *Edmond Hampden*, his case is the same with the other two Gentlemen, I cannot hope to say much after that that hath been said, yet if it shall please your Lordship, I shall remember you of so much as is befallen my lot: Sir *Edmond Hampden* is brought hither by a writ of *Habeas corpus*, and the keeper of the Gate-house

houſe hath returned upon the writ, that Sir *Edmond Hampden* is detained in priſon *per ſpeciale mandatum Domini Regis, mihi ſignificatum per Warrantum duorum Privati Concilii dicti domini Regis*, and then he recites the warrants of the Lords of the Councell, which is, that they do will and require him to detain this Gentleman ſtill in priſon, letting him know that his firſt impriſonment, &c.

May it pleaſe your Lordſhip, I ſhall humbly move you that this Gentleman may alſo be bailed, for under favour my Lord, there is no cauſe in the return, why he ſhould be any farther impriſoned and reſtrained of his liberty.

My Lord, I ſhall ſay ſomething to the form of the writ, and of the return, but very little to them both, becauſe there is a very little left for me to ſay.

My Lord, to the form, I ſay it expreſſeth nothing of the firſt caption, and therefore it is inſufficient, I will adde one reaſon as hath been ſaid: the *Habeas Corpus* hath onely theſe words, *quod habeas corpus ejus una cum cauſa detenſionis & non captionis:* But my Lord, becauſe in all impriſonment there is a cauſe of caption and detention, the caption is to be anſwered as well as the detention.

I have ſeen many writs of this nature, and on them the caption is returned, that they might ſee the time of the caption, and thereby know whether the party ſhould be delivered or no, and that in regard of the length of his impriſonment.

The next exception I took to the form is, that there is much incertainty in it, ſo that no man can tell when the writ came to the keeper of the priſon, whether before the return or after, for it appears not when the Kings command was, for the commitment or the ſignification of the Councell came to him: It is true, that it appears that the warant was dated the ſeventh of *November*, but when it came to the keeper of the priſon that appears not at all; and therefore as for want of mentioning the ſame time of the caption, ſo for not expreſſing the ſame time when this warrant came, I think the return is faulty in form and void.

And for apparent contradiction alſo, the return is inſufficient, for that part of the return which is before the warrant, it is ſaid *quod detentus eſt per ſpeciale mandatum domini Regis*, the warrant of the Lords of the Councel; the very ſyllables of that warrant are, that the Lords of the Councell do will and require him ſtill to detain him, which is contrary to the firſt part of the return.

Beſides my Lord, the Lords themſelves ſay in another place and paſſage of the warrant, that the King commanded them to commit him,

and

and ſo it is their commitment, ſo that upon the whole matter there appears to be a clear contradiction in the return, and there being a contradiction in the return, it is void.

Now my Lord, I will ſpeak a word or two to the matter of the return, and that is touching the impriſonment, *per ſpeciale mandatum domini Regis*, by the Lords of the Councell without any cauſe expreſſed, and admitting of any or either of both of theſe to be the return: I think that by the conſtant and ſettled Laws of this kingdome, without which we have nothing, no man can be juſtly impriſoned be either of them, without a cauſe of the commitment expreſſed in the return. My Lord, in both the laſt Arguments the ſtatutes have been mentioned and fully expreſſed, yet I will adde a little to that which hath been ſaid.

The ſtatute of *Magna Charta cap.* 29. that ſtatute if it were fully executed as it ought to be, every man would enjoy his liberty better then he doth.

The Law ſaith expreſly, no Free-man ſhall be impriſoned without due proceſſe of the Law; out of the very body of this Act of Parliament, beſides the explanation of other ſtatutes, it appears, *Nullus liber homo capiatur vel impriſoneturniſi per legem terræ.* My Lord, I know theſe words *legem terræ*, do leave the queſtion where it was if the interpretation of the Statute were not. But I think under your Lordſhips favour, there it muſt be intended by due courſe of Law to be either by preſentment or by indictment.

My Lords, if the meaning of theſe words *Per legem terræ* were but as we uſe to ſay, according to the lawes, which leaves the matter very uncertain: and *per ſpeciale mandatum, &c.* be within the meaning of theſe words, according to the law, then this Act had done nothing. The Act is, No Free-man ſhall be impriſoned but by the law of the land; if you will underſtand theſe words, *per legem terræ*, in the firſt ſenſe, this ſtatute will extend to Villains as well as to Free-men, for if I impriſon another man, Villain, the Villain may have an action of falſe impriſonment. But the Lords and the King (for then they both had Villains) might impriſon them and the Villain could have no remedy; but theſe words in the ſtatute *per legem terræ*, were to the Free-man, which ought not to be impriſoned, but by due proceſſe of law, and unleſſe the interpretation ſhall be this, the Free-man ſhall have no priviledge above the Villain.

So that I conceive my Lord, theſe words *per legem terræ*, muſt be here ſo interpreted, as in 42 *Eliz.* the Bill is worth the obſerving, it reciteth that divers perſons without any writ or preſentment were caſt into priſon, &c that it might be enacted that it ſhould not be ſo done hereafter; the anſwere there is, that this is an Article of the great Charter, this

ſhould

ſhould be granted, ſo that it ſeemes the ſtatute is not taken to be an explanation of that of *Magna Charta*, but the very words of the ſtatute of *Magna Charta*.

I will conclude with a little obſervation upon theſe words, *nec ſuper eum mittimus*, which words of themſelves ſignifie not ſo much, a man cannot finde any fit ſenſe for them.

But my Lord, in the ſeventh year of King *John*, there was a great Charter by which this ſtatute in the ninth of *Henry* the third, whereby we are now regulated, was framed, and there the words are, *nec eum in Carcerem mittimus*, we will not commit him to priſon; that is, the King himſelf will not: and to juſtifie this, there is a ſtory of that time in *Matthew Paris*, and in that Book this Charter of King *John* is ſet down at large, which Book is very authentique, and there it is entred, and in the ninth of *Henry* the third, he ſaith, that the ſtatute was renewed in the ſame words with the Charter of King *John*; and my Lord, he might know it better then others, for he was the Kings Chronologer in thoſe times: and therefore my Lord, ſince there be ſo many reaſons, and ſo many preſidents, and ſo many ſtatutes, which declare that no Free-man whatſoever ought to be impriſoned, but according to the laws of the land; and that the liberty of the ſubject is the higheſt inheritance that he hath; my humble requeſt is, that according to the ancient laws and priviledges of this Realm, this Gentleman my Client may be bailed.

The Argument of Maſter Calthrop *upon the* Habeas corpus.

Sir *John Corbet* being brought to the Kings Bench Bar with Sir *Edmond Hampden*, Sir *Walter Earl*, *and* Sir *John Henningham*, who were alſo brought thither by ſeverall writs of *Habeas Corpus*, with the ſame return, I being aſſigned by the Court of Kings Bench, upon a petition delivered to be of Councell with Sir *John Corbet*, did move that Sir *John Corbet* might be diſcharged of his impriſonment, and put in bail, for I did conceive that the return of this *Habeas corpus* was inſufficient, both in the matter of the return, and in the manner of the return, and ſo there ought not to be a longer detaining of Sir *John Corbet* in priſon: for as unto the manner of the return it is not laid down preciſely that Sir *John Corbet* is detained in priſon by the ſpeciall commandment of the King, ſignified by the warrant of the Lords of the Councell, the which is not a direct affirmation that he is detained by the ſpeciall command of the King, but that the Lords of the Councel by their warrant have ſignified unto him that he was committed and ſtill detained by the ſpeciall command of the King.

And howſoever the Lords of the Councell had ſignified that he was detained by the commandment of the King, yet it may be he was not

detained by the commandment of the King, for their ſignification of the ſame by warrant may be untrue, and the warrant of the Lords of the Councell that is returned *in hæc verba*, importeth that the keeper of the Gatehouſe rather took upon him to return, that was ſignified unto him by the warrant of the Lords of the Councell, that Sir *John Corbet* was committed and detained by the ſpeciall commandment of the King, becauſe if the keeper had taken upon him to affirm it upon his return, then needed he not to have returned the warrants of the Lords of the Councell, and the warrant it ſelf ſheweth that he had onely his information from the Lords of the Councell; for their warrant is to let the keeper know, that both the firſt commitment, and this direction for the continuing of him in priſon, were and are by his Majeſties ſpeciall commandment, and I do not ſee as this return is made, that an accord upon the caſe can lie upon the keeper of the Gatehouſe, if S^r. *John Corbet* was not committed nor detained by the ſpecial commandment of the King, ſo long as the warrant of the Lords of the Councell be returned as it was made, becauſe he doth return the ſame as the ſignificavit of the Lords by their warrant, Regiſter 65. the writ of Excommunication *Capiend'* goeth, *Rex vicecom' Lincoln S. ſignificavit nob' venerabilis Pater Henricus Lincolnienſis Epiſcopus per Literas ſuas Patentes quod R. ſuus Parochial' propter ſuam manifeſtã cotumac' authoritate ipſius Epiſc ordin' excom' eſt nec ſe vult per cenſuram Eccleſiaſticam juſticiar' &c. tibi præcipimus quod prædict' R. per corpus ſuum ſecundum conſuetud' Angliæ juſtic' &c.* and yet no man will ſay that there is an information of the King, that *R.* is excommunicated, but onely that the Biſhop of *Lincoln* had ſignified unto him that *R.* was excommunicated: and in *Fitz. Nat. Br.* 663. and *Regiſter* 65. it appears that the form of the writ of Excommunication *deliberand'* is, *Rex Vicecom' London Salut'. Cum Thom' Jay allutar' London qui nuper ad denuntiat. venerabil' Patris Archiep' Eborum pro contumaciis ſuis ratione contractus in civitate noſtra Eborum habit' ut dicebat, tanquam excom' & claves Eccleſiæ contemnent' per corp' ſuum ſecundum conſuetud' Angliæ per te juſtic' præcepimus, donec &c. eſſet ſatisfact' eid' Archiepiſcopo, ad ſatisfaciendum Deo & ſanctæ eccleſiæ, ſufficientem expoſuit cautionem, per quod eidem Archiepiſcopus offic. Archdiac London. mutuæ viciſsitudin' obtentu ſcripſit ut ipſum abſolvat ab excom' ſenten' memorata ſicut idem Archiepiſcopus per Literas ſuas Patentes nob' ſignificavit, Tibi præcipimus quod præd. Thom' cum tibi conſtare poterit ipſum ab excom' prædict' per prædict' Official' abſolvi à Priſon' qua detinetur ſi ea occaſione & non alia detineat' in eadem ſine dilatione deliberari fac'* And yet it cannot be ſaid, that although the King recited in his writ that the Archbiſhop had ſignified unto him that he had written unto the Officiall of the Archdeacon, that the King ſaid that the Archbiſhop had written, for he doth not affirm ſo much preciſely, but onely referreth himſelf unto the Certificate of the Archbiſhop.

Plowden 122 *Buckley* and *Rivers* caſe, it is put that if a man will bring an action of debt upon an obligation, and declare that it appears by the obligation

obligation that the defendant ſtood bound to the plaintiffe in twenty pounds, the which he hath not paid, this declaration is not good, inſomuch as it is not alledged by matter in fact, that he was bound unto him in twenty pound, but the deed is alledged by recitall onely 21. *Ed.* 4. 43.

Plowden Com' 126. & 143. *Browning* and *Beeſtons* caſe.

The Abbot of *Waltham* being appointed collector of a Diſme granted unto the King in diſcharge of himſelf, in the Exchequer, pleadeth, *Quo inter recordat' Ter Paſc. anno* 25. *domini Regis Edwardi* 1. *inter alia continetur quod R.* 2. had granted unto the predeceſſors of the ſaid Abbot, that he nor any of his ſucceſſours ſhould be any collectors of any diſmes to be granted afterwards, and it was adjudged that this plea was ill.

For the ſaying [it was contained among the Records,] it is no preciſe affirmation that the King had granted to his predeceſſors, that they ſhould be diſcharged of the collecting any diſmes, but it is onely an allegation by way of recitall, and not by preciſe affirmation, the plea may not be good.

2 & 3 *Mar. Dier.* 117. & 118. the plaintiffes reply in barre of all pleadeth, that *John Abbot of W.* was ſeiſed of his lands in right of his Church, and ſo ſeiſed by the aſſent of the tenant by indenture, 14 *Hen.* 4. *teſtat' quod prædict' Abbat' & convent' demiſerunt & tradiderunt*, unto the plaintiffe, and ruled, that this form of pleading was ill, inſomuch as it was not alledged by preciſe affirmation, *quod demiſerunt, ſed indentura teſtatur, quod demiſerunt*, which is not ſufficient, inſomuch as it is onely an allegation by way of recitall, that the Indenture doth witneſſe, and the ſame Indenture may witneſſe ſo much, and yet not be a demiſe.

And if in pleading there muſt be direct affirmation of the matter alledged, then *à fortiore* in a return, which muſt be more preciſe then in pleading, and ſo by all the caſes I have formerly touched, it appeareth that this return is no expreſſe affirmation of the keeper of the Gatehouſe, that Sir *John Corbet* is detained in priſon by the ſpeciall commandment of the King, but onely an affirmation of the Lords of the Councell, who had ſignified unto him that his detainment in priſon was by ſpeciall command of the King.

The return which ought to be certain, and punctuall, and affirmative, and not by way of information out of another mans mouth, may not be good, as appeareth by the ſeverall books of our law.

23 *Ed.* 3. *Rex vic'* 181. upon a *Homine replegiando*, againſt the Abbot of *C.* the Sheriffe returneth that he had ſent to the Bailiffe of the Abbot that anſwered him that he was the villain of the Abbot, by which he might not make deliverance, and a *Sicut alias* was awarded,

for this return was insufficient, insomuch that he had returned the answer of the Bailiffe of the Abbot where he ought to have returned the answer of the Abbot himself out of his own mouth.

Trin. 22. Ed. 2. Rot. 46. parent. vill' & Burg. Eveſque de Norwich, repl' 68. Nat. Br. Caſe 34. Fitz. Nat. Br. 65. & 34. Ed. 3. Excom' 29. the caſe appeareth to be ſuch in a treſpaſſe, the defendant pleadeth, the plaintiffe is excommunicate, and ſheweth forth the letter of the Biſhop of *Lincoln*, witneſſing that for divers contumacies, &c. and becauſe he had certified no excommunic' done by himſelf, but by another, the letter of excommunication was annulled, for the Biſhop ought to have certified his own act, and not the act of another.

Hillarii 21 Hen. 8. Rot. 37. it appeareth by the return of an *Habeas corpus*, that *John Parker* was committed to priſon for ſecurity of the peace, and for ſuſpicion of felony, as *per mandatum Domini Regis nunciatum, per Robertum Peck de Cliffords* Inne, and upon his return *John Parker* was bailed, for the return *Commiſſ. fuit per ſpeciale mandatum domini Regis, nunciatum per Robertum Peck* was not good, inſomuch that it was not a direct return that he was committed *per mandatum Domini Regis.*

And for the firſt point, I conclude that this return is inſufficient in form, inſomuch that it doth not make a preciſe and direct return, that he was committed and detained by the ſpeciall command of the King, but onely as he was ſignified by the warrant of the Lords of the Councell, which will not ſerve the turn; and upon the book of *9 Hen. 6. 44.* the return of the cauſe of a mans impriſonment ought to be preciſe and direct upon the *Habeas corpus*, inſomuch as thereby to be able to judge of the cauſe, whether it be ſufficient or not, for there may not any doubt be taken to the return, be it true or falſe, but the Court is to accept the ſame as true: and if it be falſe, the party muſt take his remedy by action upon the caſe.

And as concerning the matter of the return, it will reſt upon theſe parts

Firſt, whether the return be that he is detained in priſon by ſpeciall commandment of our Lord the King, be good or not, without ſhewing the nature of the commandment, or the cauſe whereupon the commitment is grounded in the return.

The ſecond is, whether the time of the firſt commitment by the commandment of the King, not appearing to the Court, is ſufficient to detain him in priſon.

Thirdly, whether the impriſonment of the ſubjects without cauſe ſhewed, but onely by the commandment of the King, be warrantable by the laws and ſtatutes of this Realm.

As

As unto the first part, I find by the books of our law, that commandments of the King are of severall natures, by some of which the imprisonment of a mans body is utterly unlawfull: and by others of them, although the imprisonment may be lawfull, yet the continuance of him without bail or mainprise, will be utterly unlawfull.

There is a verball command of the King which is by word of mouth of the Kings onely, and such commandment by the King, by the books of our law will not be sufficient either to imprison a man or to continue him in prison, 16. 6. *Monstrans de faict si*, upon an action of trespasse brought for cutting of trees, the defendant pleadeth that the place where he cut them is parcell of the Manor of *D.* whereof the King is seised in fee, and the King commanded him to cut the trees, and the opinion of the Court there is, that the plea in barre was ill, because he did not shew any speciall commandment of the King, and there it is agreed by the whole Court, that if the King commandeth one to arrest another, and the party commanded did arrest the other, an action of trespasse or false imprisonment is maintainable against the party that arrested him, although it were done in the presence of the King, 39 *H.6.* 17. where one justifieth the seisure of the goods of a person that is outlawed by the commandment of the King, such a party being no Officer may not in an action brought against him have any aid of the King; for such a commandment given to one that is not an Officer, will not any wayes avail him that is to justifie himself by the return of that commandment.

37 *Hen.6.* 10. If the king give me a thing and I take the same by his commandment by word of mouth, it is not justified by law, nothing may passe without matter of Record.

10 *Hen.* 7. 7. & 17. 18. it is agreed that Justices may command one to arrest another that is in their view or presence, but not one that is out of their view or presence.

And *Keble* 10 *Hen.* 7. 13. said, that where one is arrested by a parroll command in their view or presence, it is fitting that a record may be made of it, insomuch that without such a record there can hardly be a justification in another Term.

Secondly, there is a commandment of the King by his Commission, which according unto *Calvins* case in the seventh Report, it is called by him *breve mandatum non remediabile*, and by virtue of such a commandment the King may neither seise the goods of his subject, nor imprison his body, as it is resolved in 42 *Ass. pl.* 5. where it is agreed by all the justices that a Commission to take a mans goods, or imprison his body without indictment or suit of the party, or other due processe, is against the Law.

Thirdly, there is a commandment of the King which is grounded upon a ſuggeſtion made to the King or to his Councell ; and if a man be committed to priſon by ſuch a ſuggeſtion by commandment of the King, it is unlawfull, and not warranted by the Law of the Realm.

The 25 of *Edward* the third, *cap.* 4. *de Proviſoribus*, whereas it is contained in the great Charter of the *Franchiſes* of *England*, that none ſhall be impriſoned or arreſted of his Free-hold or of his Franchiſes, nor of his free cuſtomes, but by the Law of the land.

It is awarded, conſented and eſtabliſhed, that from hence forth none ſhall be taken by petition or ſuggeſtion made to our Soveraign Lord the King, or to his Councell, untill it be by indictment or preſentment of his good and lawfull neighbours, where ſuch deeds are done in due manner, or by proceſſe made by writ originall at the common law, nor of his free-hold, unleſſe he be duely brought in, and anſwer, and forejudged of the ſame by way of Law, and if any thing be done againſt the ſame, it ſhall be redreſſed and holden for nought.

37 *Ed.* 3. cap. 10. although it be contained in the great Charter, that no man be taken or impriſoned, or put out of his freehold, without due proceſſe of the law : nevertheleſſe divers perſons make falſe ſuggeſtions to the King himſelf, as well for malice as otherwiſe, whereof the King is often grieved, and divers of the Realm put in great damages contrary to the form of the ſame Statute.

Wherefore it is ordained, that all they that make ſuch ſuggeſtions be ſent with their ſuggeſtions to the Chancellour or Treaſurer, and they and every of them find ſureties to purſue their ſuggeſtions, and endure the ſame pain that the other ſhould have had ; if in caſe that his ſuggeſtion be found untrue, and that then proceſſe of the law be made againſt them without being taken or impriſoned againſt the form of the ſame Charter, and other ſtatutes.

So that it appears by theſe ſeverall ſtatutes, that ſuch commandments of the King as are grounded upon ſuggeſtion, either made to himſelf or to his Councell, for the impriſonment of a man, are againſt the law.

Fourthly, I find that there is a commandment of the King which is made under his hand, with his ſignet, for in the fourth and the fifth of *Philip* and *Mary*, *Dier.* 162. where the ſtatute of 1 *Rich.* 2. *cap.* 11. reſtraineth the Warden of the Fleet for letting any man at large that is in upon judgement at the ſuit of any man, except it be by writ or other commandment of the King ; It was doubted whether the Queen by letter under her hand and privy ſignet, doth give commandment to the Warden of the Fleet to ſuffer a man that is there in execution to go about his buſineſſe, or the affaires of the Queen : whether this be a warrantable command or not within the Statute: and the Law hath alwayes been conceived upon that book, that ſuch a commandment is not warrantable by Law, and if ſuch a command will not ſerve the turn, to give unto a man his liberty which the Lord favoureth, and had the counte-

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nance of an Act of Parliament for the doing of it, then I conceive it ſhould be a more ſtrong caſe, the King ſhould not have power by his commandment to impriſon a man, without due proceſſe of the Law, and reſtrain him of his liberty when there had been ſo many Acts of Parliament made for the liberty of the ſubjects.

Fifthly, I do find that there is the commandment of the King which is by his writ under the Great Seal, or the ſeal of the Court out of which it iſſueth, *Regiſt. f. 69. & 70.* in the writ *de cautione admittenda*, I find the words, *mandatum Regis* expounded to be *breve Regis*, for the writ goeth: *Rex vic' Salutem. Cum nuper ad requiſitionem S. de Iſle Canonici Lincol. venerabilis Patris H. Lincoln. Epiſcopi ipſo in remotis agente Vicarii general. per Literas ſuas patentes nobis ſignificantis Nicho. B. dict. Lincoln. Dioc. propter manifeſtam contumaciam Authoritate ipſius Epiſcopi Ordinar. excommunicat. eſſe nec ſi velle &c. vobis præceperimus quod præfat. &c. ſatiſfactum ex parte ipſius N. qui virtute mandati noſtri prædict. per vos Capt. & in Priſon. noſtra de Newgate detent. exiſtit, &c. nos nolentes quod præfat. N. per breve noſtrum prædict. via præcludatur &c. proſequi poſsit in forma Juris maxim' &c. integer eſse debeat, vobis præcipimus quod ſcire &c. quod ſit &c. quare prædict. N. à Priſona prædict. deliberari non debeat. Rex Juſticiar. ſuis de Banco ſalut. Cum nos nuper ad ſignificationem S. de Iſle &c. uſque ibi excommunicat. extitiſse nec ſe velle &c. eſset ſatisfactum ex parte ipſius N. virtute mandati noſtri prad. capt. & in Priſona noſtra de Newgate tunc detenti, &c. & nolentes eo prætextu præfato N. per breve noſtrum prad. via præcludat. quo minus appellac. ſua negotium &c. proceſserat. & appellant ſtatut. &c. per breve noſtrum præceperimus præfat. vic. quod ſcire facerent. &c. ſignific. & conſult. & circumſpect. in Placitis per breve prædict. coram vobis pendentibus procedere valeatis ſecundum legem & conſuetudinem Regni noſtri.*

Stamf. 72.5 E. 3. c. 8.1 E. c. 3. 9. ſaith, that every *Capias* in a perſonall action is a Commandment of the King, for it is *Præcipimus tibi quod capias &c.* and yet the defendant as there it is ſaid is repleviſable by the Common Law, *7 R. 20. a. Calvins* caſe, ſaith that there are two kind of writs, *viz. brevia mandatoria & remedialia, & brevia mandatoria & non remdeialia: breuia mandatoria & remedialia*, are writs of Right, Formedon, &c. debts, treſpaſſes, and ſhortly all writs reall and perſonall whereby the party wronged is to recover ſomewhat, and to be remedied for that wrong which is done unto him.

Sixthly, I do finde by our books of Law, and by the Regiſter that this ſpeciall *mandatum domini Regis*, is expounded to be his writ, and that the Law taketh no notice of any other *ſpeciale mandatum* then by this writ; the which being ſo when the return is made, that he is impriſoned and detained in priſon by the ſpeciall commandment of the King, how can the Court adjudge upon this return, that Sir *John Corbet* ought to be kept in priſon, and not to be bailed, when the nature of the ſpeciall commandment is not ſet forth in the return, whereby it

may

may appear unto the Court that he is not bailable. In *Bracton.*c.12.112. you ſhall ſee a writ reciting. *Præcipimus tibi quod non implacites nec implacitari permittas talem de libero tenemento ſuo in tali villa ſine ſpeciali præcepto noſtro vel Capitalis Juſticiar' noſtri.*

And the reaſon of it there is given, *quia nemo de libero tenemento ſine brevi ſive libello conventionali niſi gratis voluerit reſpondebit.* So as the exception of ſpeciall commandment by the very book, appeareth to be *breve ſive libellus conventionalis*, *Regiſt.* 271. the writ of Manucaption goeth in this manner: *Rex vic. Salut. Cum nuper aſsignaverimus dilectos & fideles noſtros A. B. & C. D. ad inquiſitiones de forſtallariis & tranſgreſsionibus contra formam ſtatuti dudum apud Winton. editi in com. tuo faciend. & ad illos quos inde culpabiles invenirent. capiend. & in Priſona noſtra ſalvo cuſtod. faciend. donec aliud inde præcepiſsemus quod C. D. & E. pro hujuſmodi forſtallamentis & tranſgreſsionibus unde coram præfat. A.B. & C. indict. fuerint, capt. & in Priſona de L. detent. exiſt. à qua deliberari non poſſunt, ſine mandato noſtro ſpeciali, Nos volentes eiſdem C. D. & E. graciam in hac parte facere ſpecialem, tibi præcipimus quod ſi prædict. C. D. & E. occaſione prædict. & non alia in Priſona prædict. detineantur, & pro tranſgreſsionibus illis ſecundum legem & conſuetudinem Regni noſtri Angliæ replegiabiles exiſtunt &c. tunc impos C. D. & E. à Priſona prædict. ſi ea occaſione & non alia detineantur in eadem interim deliberari facias per manucapt. ſupradict. & habeas ibi tunc coram præfat. Juſticiar. nomina manucapt. illorum & hoc breve.*

And the expoſition of this *ſpeciale mandatum domini Regis*, mentioned in the writ, is expounded to be *breue domini Regis*, and thereupon is this writ directed unto the Sheriffe for the delivery of them.

And ſo for the branch of the firſt part: I conclude, that the ſpeciall command of the King without ſhewing the nature of the commandment of the Kings, is too generall, and therefore inſufficient: for he ought to have returned the nature of the commandment of the King, whereby the Court might have adjudged upon it, whether it were ſuch a commandment that the impriſonment of Sir *John Corbet* be lawfull or not, and whether it were ſuch a commandment of the King, that although the impriſonment were lawfull at the firſt, yet he might be bailed by Law.

And as for the generall return of *ſpeciale mandatum domini Regis*, without ſhewing the cauſe of the impriſonment either ſpeciall or generall, I hold that for that cauſe alſo the return is inſufficient.

Firſt, in regard of the *Habeas corpus*, which is the commandment of the King onely, made the 15 of *November*.

According to the *Teſte* of the writ commanding the keeper of the Gatehouſe to have the body of Sir. *John Corbet*, *una cum cauſa detenſio-*

nis & ad ſubjiciendum & recipiendum ea quæ curia noſtra de eo ad tunc ibid. ordinar. contingat. So as the commandment of the writ being to ſhew the cauſe of his detaining in priſon, the keeper of the gatehouſe doth not give a full anſwer unto the writ, unleſſe the cauſe of the detainment in priſon be returned, and the Court doth not know how to giue their judgement upon him, either for his impriſonment, or for his diſcharge, according to the purport of the writ, when there is not a cauſe returned, and foraſmuch as upon an excommengement certified, it hath been adjudged oftentimes that Certificates were inſufficient where the cauſe of the commitment hath not been certified, that the Court might adjudge whether the Eccleſiaſticall Judges who pronounced the excommunication, had power over the original cauſe according to the book of 14 *Hen.* 4. 14. 8. *Rep.* 68. *Trollops* caſe, & 20 *Ed.* 3. Excommengement 9.

So upon an *Habeas corpus* in this Court, where a man hath been committed by the Chancellour of *England* by the Councell of *England*, Marches of *Wales*, Warden of the Stanneries, High Commiſſion, Admiralty, Dutchy, Court of requeſt, Commiſſion of Sewers or Bankrupts, it hath ſeverall times been adjudged that the return was inſufficient where the particular cauſe of impriſonment hath not been ſhewen, to the intent that it might appear that thoſe that committed him had juriſdiction over the cauſe, otherwiſe he ought to be diſcharged by the Law, and I ſpare to recite particular cauſes in every kind of theſe, becauſe there are ſo many preſidents of them in ſeverall ages of every King of this Realm: and it is an infallible maxime of the Law, That as the Court of the Kings Bench, and Judges ought not to deny an *Habeas corpus* unto any priſoner that ſhall demand the ſame by whomſoever he be committed, ſo ought the cauſe of his impriſonment to be ſhewn upon the return, ſo that the Court may adjudge of the cauſe whether the cauſe of the impriſonment be lawfull or not: and becauſe I will not trouble the Court with ſo many preſidents but ſuch as ſhall ſuit with the cauſe in queſtion, I will onely produce and vouch ſuch preſidents, whereas the party was committed either by the commandment of the King, or otherwiſe by the commandment of the Privy Councell, which *Stamford fol.* 72. tearmeth the mouth of the King, ſuch acts as are done by the Privy Councell, being as Acts done by the King himſelf.

And in all theſe cauſes you ſhall find that there is a cauſe returned as well as a *ſpeciale mandatum domini Regis &c.* or *mandatum Privati Conſilii domini Regis*, whereby the Court may adjudge of the cauſe, and bail them if they ſhall ſee cauſe.

In the eighth of *Henry* the ſeventh, upon return of an *Habeas corpus* awarded for the body of one *Roger Sherry*, it appeareth that he was committed by the Mayor of *Windſor* for ſuſpicion of felony, and *ad ſectam ipſius Regis pro quibuſdam feloniis & tranſgreſſionibus ac per mandatum domini Regis*; 21 *Hen. the ſeventh upon the return of an Habeas corpus*

ſent for the body of *Hugh Pain*, it appeared that he was committed to priſon, *per mandatum dominorum Privati Concilii domini Regis pro ſuſpicione feloniæ.*

Primo Henrici Octavi, *Rot.* 9. upon the return of an *Habeas corpus* ſent for the body of one *Thomas Harriſon* and others, it appears that they were committed to the Earl of *Shrewsbury* being Marſhall of the houſhould, *Per mandatum Domini Regis*, *& pro ſuſpicione feloniæ*, *& pro homicidio facto ſuper Mare.*

3 & 4 *Philip. & Mariæ*, upon a return of an *Habeas corpus* ſent for the body of one *Peter Man*, it appeareth that he was committed *pro ſuſpicione feloniæ*, *ac per mandatum Domini Regis & Reginæ.*

4 & 5 *Philippi & Mariæ*, upon the return of an *Habeas corpus* ſent for the body of one *Thomas Newport*, it appeared that he was committed to the Tower, *pro ſuſpicione contrafact. monetæ per privatum Concilium domini Regis & Reginæ.*

33 *Elizabethæ* upon the return of an *Habeas corpus* for the body of one *Lawrence Brown*; it appeareth that he was committed *per mandatum Privati Concilii dominæ Reginæ pro diverſis cauſis ipſam Reginam tangen. ac etiam pro ſuſpicione proditionis.*

So as by all theſe preſidents it appeareth where the return is either *Per mandatum domini Regis*, or *Per mandatum dominorum Privati Concilii domini Regis*; there is alſo a cauſe over and beſides the *mandatum* returned, as unto that which may be objected, that *per mandatum domini Regis*, or *Privati Concilii domini Regis* is a good return of his impriſonment, I anſwer.

Firſt, that there is a cauſe, for it is not to be preſumed that the King or Councell would commit one to priſon without ſome offence, and therefore this *mandatum* being occaſioned by the offence or fault, the offence or fault muſt be the cauſe, and not the command of the King or Councell which is occaſioned by the cauſe.

Secondly, it apeares that the juriſdiction of the Privy Councell is a limited juriſdiction, for they have no power in all cauſes, their power being reſtrained in certain cauſes by ſeverall Acts of Parliament, as it appeareth by the ſtatute of 20 *Edward* the third, *c.* 11. 25 *Ed.* the third *c.* 1. *ſtat.* 4. the private petition in Parliament permitted in the 1 of *R.* 2. where the Commons petition that the Privie Councell might not make any Ordinance againſt the Common Law, Cuſtomes or Statutes of the Realm; the fourth of *Henry* the fourth, *ca.* 3. 13 *Hen.* the fourth, 7. 31 *Henry* the ſixth, and their juriſdictions being a limited juriſdiction, the cauſe and grounds of their commmitment ought to appear, whereby it may appear if the Lords of the Councell did commit him for ſuch a cauſe as was within their juriſdiction: for if they did command me to be committed to priſon for a cauſe whereof they had not juriſdiction, the Court ought to diſcharge me of this impriſonment,

ſonment, and howſoever the King is *Vicarius Dei in terra*, yet *Bracton. cap. 8. fol.* 107. ſaith, *quod nihil aliud poteſt Rex in terris cum ſit Miniſter Dei & Vicarius, quam ſolum quod de jure poteſt. nec obſtat, quod dicitur quod Principi placet, legis habet vigorem, quia ſequitur in fine legis cum lege Regia quæ de ejus imperio lata eſt, id eſt non quicquid de voluntate Regis temere præſumptum eſt, ſed animo condendi Jura, ſed quod conſilio Magiſtratuum ſuorum, Rege author. præſtant & habita ſuper hoc deliberatione & tract. rect. fuer. definit. Poteſtat. itaque ſua juris eſt, & non injuriæ.* The which being ſo, then alſo it ought to appear upon what cauſe the King committeth one to priſon, whereby the Judges which are indifferent between the King and his Subjects, may judge whether his commitment be againſt the Laws and Statutes of this Realm or not.

Thirdly, it is to be obſerved, that the Kings command by his Writ of *Habeas corpus* is ſince the commandment of the King for his commitment, and this being the latter commandment, ought to be obeyed; wherefore that commanding a return of the body *cum cauſa detentionis*, there muſt be a return of ſome other cauſe then *Per mandatum domini Regis*, the ſame commandment being before the return of the Writ.

Paſch. 9. E. 3. pl. 30. fol. 56. upon a Writ of *Ceſſavit* brought in the County of *Northumberland*, the Defendants plead, That by reaſon the Country being deſtroyed by Warres with the Scots, King *Edward* the ſecond gave command that no Writ of *Ceſſavit* ſhould be brought during the Warres with *Scotland*, and that the King had ſent his Writ to ſurceaſe the Plea, and he averreth that the Warres with *Scotland* did continue.

Hearle that giveth the Rule ſaith, That we have command by the King that now is, to hold this Plea, wherefore we will not ſurceaſe for any writ of the King that is dead; and ſo upon all theſe reaſons and preſidents formerly alledged, I conclude, that the return that Sir *John Corbet* was committed and detained in priſon, *Per ſpeciale mandatum domini Regis*, without ſhewing the nature of the commandment by which the Court may judge whether the commandment be of ſuch a nature as he ought to be detained in priſon, and that without ſhewing the cauſe upon which the commandment of the King is grounded, is not good. As unto the ſecond part, which is, Whether the time of the commitment by the return of the Writ, not appearing unto the Court, the Court ought to detain him in priſon or no?

I conceive that he ought not to be continued in priſon, admitting that the firſt commitment by the command of the King were lawfull, yet when he hath continued in priſon by ſuch reaſonable time as may be

thought fit for that offence for which he is committed, he ought to be brought to anſwer, and not to continue ſtill in priſon without being brought to anſwer.

For it appears by the Books of our Laws, that liberty is a thing ſo favoured by the Law, that the Law will not ſuffer the continuance of a man in priſon for any longer time then of neceſſity it muſt; and therefore the Law will neither ſuffer the party, Sheriffs or judges to continue a man in priſon by their power and their pleaſure, but doth ſpeed the delivery of a man out of priſon, with as reaſonable expedition as may be.

And upon this reaſon it is reſolved in 1 & 2 *El. Dyer* 175. & 8 *Ed.* 4. 13. That howſoever the Law alloweth that there may be no term between the reſt of an originall Writ and the return of the ſame, where there is onely a ſummons, and no impriſonment of the body, yet it will not allow that there ſhall be a term between the reſt of a Writ of *Capias*, and the return of the ſame, where the body of a man is to be impriſoned, inſomuch that it will give no way that the party ſhall have no power to continue the body of a man impriſoned any longer time then needs muſt. 39 *E.* 3. 7. 10 *H.* 7. 11. 6 *E.* 4. 69. 11 *E.* 4. 9. 48 *E.* 3. 1. 17 *E.* 3. 1 & 2 *Hen.* 7.

Kellawaies Reports do all agree, that if a *Capias* ſhall be awarded againſt a man for the apprehending of his body, and the Sheriffe will return the *Capias*, that is awarded againſt the party, a *non eſt inventus*, or that *languidus eſt in priſona*, yet the Law will allow the party againſt whom it is awarded for the avoiding of his corporall pennance and dures of impriſonment, to appear *gratis*, and for to anſwer.

For the Law will not allow the Sheriffe by his falſe return to keep one in priſon longer then needs muſt, 38 *Aſſ. pl.* 22. *Brooks* impriſonment 100. ſaith. That it was determined in Parliament that a man is not to be detained in priſon after he hath made tender of his fine for his impriſonment, therefore I deſire your Lordſhip that Sir *John Corbet* may not be kept longer in durance, but be diſcharged according to the Law.

The ſubſtance of the Objections made by Mr. Attorney, *General before a Committee of both Houſes, to the Argument that was made by the Houſe of Commons, at the firſt conference with the Lords out of Preſidents of Record, and Reſolutions of Judges in former times, touching the Liberty of the perſon of every Freeman, and the Anſwers and Replies then preſently made by the Houſe of Commons to theſe Objections.*

AFter the firſt conference which was deſired by the Lords, and had by a Committee of both houſes in the painted Chamber, touching the Reaſons, Laws, *Acts* of *Parliament* and Preſidents concerning the Liberty of the perſon of every Freeman, Mr *Attorney General* being heard before the *Committee* of both houſes as it was aſſented by the houſe of *Commons*, that he might be, before they went up to the conference, after ſome preamble made, wherein he declined the anſwering all Reaſons of Law, and *Acts* of *Parliament*, came onely to the Preſidents uſed in the Argument before delivered, and ſo endeavoured to weaken the ſtrength of them that had been brought in behalf of the ſubjects, & to ſhew that ſome other were directly contrary to the Law comprehended in the Reſolutions of the houſe of *Commons*, touching the bailing of Priſoners, returned upon the writ of *Habeas Corpus* to be committed by the ſpecial command of the *King*, or the Councel, without any cauſe ſhewed, for which by Law they ought to be committed. And the courſe which was taken (it pleaſed the *Committee* of both houſes to allow of) was that Mr. *Attorney* ſhould make his Objections to every particuler Preſident, and that the Gentlemen appointed, and truſted herein by the houſe of *Commons* by ſeveral Replies, ſhould ſatisfie the Lords touching the Objections made by him, againſt, or upon every particuler, as the order of the Preſidents ſhould lead them, he began with the firſt 12. Preſidents that were uſed by the houſe of *Commons* at the conference delivered by them, to prove that Priſoners returned to ſtand ſo *Committed*, were delivered upon bail by the Court of *Kings Bench*: The firſt was that of *Bildſtones* caſe in the 18. *Edw.* 3. *Rot.* 33. *Rex.*

To this he Objected, Firſt, that in the return of him into the Court, it did not appear that this *Bildſtone* was committed by the *Kings* command; and Secondly that in the Record it did appear alſo that he had been committed for ſuſpicion of counterfaiting the great Seal, and ſo by conſequence was bailable by the Law, in regard there appeared a Cauſe why he was committed, in which caſe it was granted by him (as indeed it was plain and agreed of all hands) that the Priſoner is bailable though committed by Command of the *King*, and he ſaid that this part of the Record, by which it appeared he had been committed for ſuſpicion of treaſon was not obſerved to the Lords in the Argument before uſed, and he ſaid alſo to the Lords;

that there were three ſeveral kinds of Records, by which the full truth of every award, or bailing upon a *Habeas Corpus* is known. Firſt the remembrance Roll, wherein the award is given, Secondly the file of the writt and the return, and Thirdly, the Scruect or Scruet *finium* wherein the baile is entered, and that onely the remembrance Roll of this Caſe was to be found, and that if the other two of it were extant, he doubted not but that it would appear alſo, that upon the return it ſelf, the Cauſe of the Commitment had been expreſſed, and ſo he concluded, that this proved not for the houſe of Commons, touching the Matter of bail, where a Priſoner was committed by the *Kings* ſpecial command without Cauſe ſhewed.

To this Objection the reply was, Firſt, that it was plain that *Bildſtone* was committed by the Kings expreſs Command. For ſo the very words of the Writt are to the Conſtable of the Tower, *quod eum tenendum Cuſtodiæ facias*, &c. then which nothing can more fully expreſs a Commitment by the *Kings* command. Secondly, how ever it be true, that in the latter part of the Record it doth appear, that *Bildſtone* had been Committed for ſuſpicion of Treaſon, yet if the times of the proceeding, expreſſed in the Record, were obſerved, it would be plain that the Objection was of no force: for this one ground, both in this Caſe and all the reſt, is infallible, and never to be doubted of in the Law, That Juſtices of every Court adjudge of the force and ſtrength of a return out of the body of it ſelf onely, and as therein it appears. Now in *Eaſter term* in the 18. *Edward* 3. he was returned and brought before them, as Committed onely by the Writt, wherein noe Cauſe is expreſſed, and the Leivetenant & the Conſtable of the Tower that brought him into the Court ſaies, that he had no other warrant to detain him *Niſi breve predictum*, wherein there was no mention of any Cauſe; & the Court thereupon adjudged, that *breve predictum* for that ſpeciall command, was not ſufficient *cauſa* to detain him in priſon, and thereupon he is by judgment of the Court in *Eaſter term* let to Mainprize. But that part of the Record wherein it appears, that he had indeed been committed for ſuſpicion of Treaſon, is of *Trinity* term following, when the *King*, after the letting of him to Mainprize, ſent to the Judges that they ſhould diſcharge his Mainprize, becauſe no man proſecuted him. And at that time it appears (but not before) that he had been in for ſuſpicion of Treaſon; ſo that he was returned to ſtand committed by the Kings ſpecial command onely, without Cauſe ſhewed, in *Eaſter* term, And then by judgment of the Court let to Mainprize (which to this purpoſe is but the ſame with bail, though otherwiſe it differ); And in the term following upon another occaſion the Court knew, that he had been committed for ſuſpicion of Treaſon, which hath no relation at all to the letting of him to Mainprize, nor to the judgement of the Court then given, when they did not, nor could poſſible know any Cauſe, for which the *King* had committed him. And it was ſaid in behalf of the houſe of Commons,

Nota.

That

that they had not indeed in the Argument expreſly uſed this latter part of *Bildſtones* Caſe, becauſe it being onely of *Trinity* term following, could not concern the reaſon of an Award given by the Court in *Eaſter* term next before; yet notwithſtanding that they had moſt faithfully, at the time of their Argument, delivered into the Lords (as indeed they had a perfect coppy at large of the whole Record of this Caſe; as they had done alſo of all other preſidents whatſoever cited by them; in ſo much as in truth there was not one preſident of Record of either ſide, the coppy whereof they had not delivered in likewiſe, nor did Mr. *Attorney* mention any one beſides thoſe that were ſo delivered in by them. And as touching thoſe 3. kinds of Records, the remembrance Roll, the return and file of the Writt, and the Scruets; it, was anſwered by the gentlemen imployed by the houſe of Commons, that it was true, that the Scruect and return of this Caſe of *Bildſtone* was not to be found, but that did not leſſen the weight of the preſident, becauſe always in the Award or Judgment drawn up in the remembrance Roll, the Cauſe (whatſoever it be) when any is ſhewed, upon the return is always expreſſed, as it appears clearly by the conſtant Entries of the *Kings-Bench* Court: ſo that if any Cauſe had appeared plainly in that part of the Roll which belongs to *Eaſter* term, wherein the Judgment was given, but the return of the commitment by the *Kings* command without Cauſe ſhewed, and the Judgment of the Court, that the Priſoner was to be let to Mainprize, appears therein onely, and ſo notwithſtanding any Objection made by Mr. *Attorney*, the Cauſe was maintained to be a clear proof among many others, touching the reſolution of the houſe of Commons.

To the ſecond of theſe 12. which is *Parkers* Caſe in the 22. *H.* 8. *Rot.* 37. his Objections were two, Firſt, that it is true that he was returned to be committed *Per mandatum domini Regis*; but it appeared that this command, was certified to the Shreiffs of *London* by one *Robert Peck* gentleman, and that in regard, that the command came no otherwiſe, the return was held inſufficient, and that therefore he was bailed. Secondly, that it appears alſo in the Record that he was committed *pro ſuſpicione felloniæ ac per mandatum domini Regis*, ſo that in regard that the command, that in the expreſſion of the cauſes of his commitment, ſuſpicion of fellony preceeds the command of the *King*, therefore it muſt be intended that the Court tooke the Cauſe why the *King* committed him to be of leſs moment then fellony, and therefore bailed him, For he Objected, that even the houſe of Commons themſelves, in ſome Arguments uſed by them, touching the interpretation of the ſtatute of *Weſtminſter* the firſt, *cap.* 15. about this point had affirmed, that in enumeration of particulars, thoſe of greateſt nature were firſt mentioned, and that it was ſuppoſed, that ſuch as followed were uſually of leſs nature or moment.

But the reply was to the firſt Objection, that the addition of

the certefying of the *Kings* command by *Robert Peck* altered not the Caſe, Firſt becauſe the Sheriffs in their Return took notice of the command as what they were aſſured of; and then howſoever it came to them, it was of equal force as if it had been mentioned without reference to *Peck*. Secondly, as divers Patents paſs the great Seal by writ of privy Seal, and are ſubſcribed *Per breve de privato ſigillo*; ſo diverſe *per ipſum Regem*, are ſo ſubſcribed; and oftentimes in the Roll of former times, to the words *per ipſum Regem*, are added *nunciante A. B.* So that the *Kings* command generally, and the *Kings* command related or certified by ſuch a man, is to this purpoſe of like nature. Thirdly, in the late great Caſe of *Habeas Corpus*, where the Return of the commitment was *Per ſpeciale mandatum Domini Regis mihi ſignificatum per Dominos de privato Conſilio*; the Court of *Kings-Bench* did agree, that it was the ſame, and of like force as if *mihi ſignificatum &c.* had not followed, and that thoſe words were void; According whereunto here alſo, *Per mandatum Dom. Regis nunciatum per Robert Peck*, had been wholly omitted and void likewiſe. And in truth in that late Caſe, this Caſe of *Parker* was cited both at the *Barr* and *Bench*: and at the *Bench* it was interpreted by the Judges no otherwiſe, then if it had been onely *per mandatum Domini Regis* in place of it: but the Objection there was made of another kinde, as was delivered in the firſt Argument, made out of preſidents in the behalf of the houſe of *Commons*. Therefore to the ſecond Objection touching the courſe of Enumeration of the Cauſes in the Return, it was ſaid, that howſoever in ſome *Acts* of *Parliament*, and elſe where in the ſolemn expreſſions uſed in the Law, things of greater nature preceded and the leſs follow; yet in this Caſe the contrary was moſt plain, for in the Return it appears that there were three Cauſes for detaining the Priſoners: Surety of the peace, Suſpicion of Fellony, and the *Kings* command: and Surety of the peace is firſt mentioned, which is plainly leſs then Fellony. And therefore it is plain, if any force of Argument be taken from this enumeration, that the contrary to that which Mr. *Attorney* inferred is to be concluded; that is, that as Fellony is a greater Cauſe then Surety of the peace, ſo the matter whereupon the *Kings* command was grounded, was greater then Fellony. But in truth this kinde of Argument holds neither way here, and whatſoever the Cauſe were why the *King* committed him, it was impoſſible for the Court to know it: and it alſo might be of very high moment in matter of ſtate, and yet of farr leſs nature then Fellony. All which ſhews, that this preſident hath his full force alſo, according as it was firſt uſed in Argument by the houſe of *Commons*.

To the third of theſe, which is *Binckes* Caſe in the 35. *H.* 8. *Rot.* 33. the Objection was, that there was a Cauſe expreſſed, *pro ſuſpicione felloniæ*: and though *pro aliis cauſis illos moventibus*, were added in the Return; yet becauſe in the courſe of enumeration, the gene-

general name of *aliis* comming after particulars, includes things of leſs nature then the particuler doth, therefore in this Caſe ſuſpition of fellony being the firſt, the other Cauſes afterwards generally mentioned muſt be intended of leſs nature, for which the Priſoner was bailable, becauſe he was bailable for the greater, which was ſuſpition of fellony. Hereunto it was replyed, that the Argument of enumeration in theſe Caſes is of no moment, as is next before ſhewed: and that although it were of any moment, yet any Caſe, though leſs then fellony, might be of very great conſequence in matter of ſtate, which is pretended uſually upon general Returns of command without cauſe ſhewed; and it is moſt plain, that the Court could not poſſible know the reaſons why the Priſoner here was committed, and yet they bailed him, without looking further after any unknown thing under that title of Matter of ſtate, which might as well have been in this Caſe as in any other whatſoever.

To the 4. of theſe, which is *Overton's* Caſe in 2. & 3. *Phet. M.* Rot. 58. and to the 5. which is *Newports* Caſe *P.* & *M.* 4. & 5. Rot. 45. onely theſe Objections were ſaid over again by Mr. *Attorney*, which are mentioned in the Argument made out of preſidents in behalf of the houſe of Commons at the firſt conference, and in the ſame Argument are fully and clearly ſatisfied, as they were in like manner now again.

To the 6. of theſe, which was *Lawrence* his Caſe *M.* 9. *Eliz.* *Rot.* 35. and the 7. which is *Conſtables* *P.* 9. *Eliz.* *Rot.* 68. the ſame Objections onely were likewiſe ſaid over again by Mr. *Attorney*, that are mentioned, and clearly and fully anſwered in the Argument made at the firſt conference out of preſidents in behalf of the houſe of Commons; the force of the Objection being onely, that it appeared in the Margent of the Roll, that the word *Pardon* was written: but it is plain that the word there hath no reference at all to the reaſon why they were bailed, nor could it have reference to the Cauſe why they were committed, in regard the Cauſe why they were committed is utterly unknown and was not ſhewed.

To the 8. of theſe Preſidents which was *Brownings* Caſe *P.* 20. *Eliz.* Rot. 72. It was ſaid by Mr. *Attorney* that he was bailed by a letter from the Lords of the Councel, directed to the Judges of the Court; but being asked for that letter, or any Teſtimony of it, he could produce none at all; but he ſaid he thought the Teſtimony of it was burnt among many other things of the Councel-table at the burning of the banquetting houſe.

To the 9. being *Harecourts* Caſe *H.* 40. *Eliz.* *Rot.* 62. the ſelf ſame Objection was made by him, but no warrant was ſhewed to maintain his Objection.

To the 10. which is *Cateſbyes* Caſe *in vacatione Hill.* 43. *Eliz.* he ſaid that it was by direction of a privy Seal from the *Queen*; and to that purpoſe he ſhewed the Seal of 43. *Eliz.* which is at large

among the Tranſcripts of the Records concerning bails taken in Caſes where the *King* or the Lords aſſented. But it was replied, that the privy ſeal made onely for ſome particular Gentlemen mentioned in it, and for none other, as indeed appears in it: and then he ſaid, that it was likely that *Cateſby* here had a privy ſeal in his behalf, becauſe thoſe other had ſo; which was all the force of his Objection.

To the 11. of theſe, which is *Beckwiths* Caſe *in Hill.* 12. *Jacobi* Rot. 153. he ſaid that the Lords of the councel ſent a letter to the Court of *Kings-Bench* to bail him. And indeed he produced a letter, which could not by any means be found when the Arguments were made at the firſt conference: and this letter, and a coppy of an obſcure Report made by a young ſtudent (which was brought to another purpoſe, as is hereafter ſhewed) were the onely things written of any kinde that Mr, *Attorney* produced, beſides the particulars ſhewed by the houſe of Commons at the firſt conference. To this it was replied, that the letter was of no moment, being onely a direction to the *Chief Juſtice*, and no Matter of record, nor any way concerning the reſt of the *Judges*: And beſides, either the Priſoner was bailable by the Law, or not bailable: if bailable by the Law, then was he to be bailed without any ſuch letter; if not bailable by the Law, then plainly the Judges could not have bailed him upon the letter, without breach of their oath, which is, *that they are to do Juſtice according to the Law, without having reſpect to any command whatſoever*: ſo that letter in this Caſe, or the like in any other Caſe, is for point of Law to no purpoſe, nor hath any weight at all by way of Objection againſt what the Record and the Judgment of the Court ſhews us.

To the 12. and laſt of theſe, which is Sir *Thomas Monſons* Caſe in the 14. *Jacobi. Rot.* 147. the ſame Objection was ſaid over by him, which was mentioned and clearly anſwered in the Argument; and that one ground which is infallible, *That the Judgment upon a return is to be made onely out of what appears in the body of the return it ſelf*, was again inſiſted upon in this Caſe, as it was alſo in moſt of the reſt. And indeed that alone which is moſt clear Law, fully ſatisfies almoſt all kinds of Objections, that have been made to any of theſe preſidents, which thus rightly underſtood, are many ample Teſtimonies of the Judgments of the Court of *Kings-Bench*, touching this great point, in the ſeveral ages and raignes of the ſeveral *Princes* under which they fell.

After his Objections to the 12. and the Replies and ſatisfactions given to thoſe Objections, he came next to thoſe wherein the Aſſent of the *King* and privy Councel appears to have been upon the enlargment: but he made not to any of thoſe any other kinde of Objections, then ſuch as are mentioned and clearly anſwered (as they were now again) in the Argument made at the firſt conference. And for ſo much as concerns Letters of aſſent or direction, the ſame was here

ſaid

ſaid again by way of Reply to him, as is before ſaid touching the letter in *Beckwithes* caſe.

After theſe were diſpatched, he came to urge the eight *Preſidents*, which ſeemed to make for the other ſide againſt the reſolution of the Houſe of Commons: which eight were uſed, and Coppies of them alſo were given in to the Lords at the firſt conference.

Of theſe eight the firſt 4. were urged by him, as being of one kinde; the difference of them onely being ſuch, that, ſave onely in the names of Priſons and of Perſons, they are but the ſelf ſame.

The force of theſe four he objected thus; that *Richard Everard* (for the purpoſe) in the firſt of them, which is 5.*H.*7.*Rot.*18. *Roger Cherry*: in the ſecond of them, which is 8.*H.*7.*Rot.*12. *Chriſtofer Burton*: in the third of them, which is 9. *H.* 7. *Rot.* 14. and *George Urſwick* in the fourth of them, which is 19.*H.*7.*Rot.*33. were returned into the *Kings-bench* upon ſeveral Writs of *Habeas corpus*, to have been committed and detained in the ſeveral Priſons whence they came *per mandatum Domini Regis*, & that upon that return they were committed to the Marſhall of the *Kings-bench*; and that however it had been objected againſt thoſe Preſidents, that this kinde of commitment was by the courſe of that Court, alwayes done before the bayling of the Priſoner. Yet that it did not appear that they were bayled.

The Reply to this Objection was, That by conſtant courſe of *Kings-bench*, whoſoever came in upon *Habeas Corpus*, or otherwiſe upon any Writ in that Court, cannot be bayled untill he be firſt committed to the Marſhall of that Court; and that thence it was, that all thoſe 4. were committed to the Marſhall, as appears by the entry *Qui committitur Mareſchallo*, &c. which is the uſual entry in ſuch a caſe, and that the Clerks of that Court acknowledge this courſe and entry to be moſt conſtant. So that all the inference that can be made out of theſe four, is, but, that four Priſoners being brought, from ſeveral Priſons by *Habeas Corpus* into the *King-bench*, and return'd to ſtand committed *per mandatum Domini Regis*, were ſo far from being remaunded by the Law, that in all theſe four caſes, they were partly firſt taken from the ſeveral Priſons, wherein they had been detained, by ſuch a general command (which could not have been, if they had not been adjudged in every one of the caſes to have been baylable by the Court) and that this commitment of them to the Marſhall of the *Kings-bench* was the firſt ſtep towards the bayling of them, as in all other caſes. But that it appears not, that either they ever demaunded to be bayled, or that they were able to finde ſufficient bayl: And if they did not the one, or could not do the other, it may follow indeed that they were not bayled. But this commitment to the *Kings-bench* being the firſt ſtep to the bayling of them, (as by the conſtant courſe it is) ſhews moſt plainly that they were baylable by the Law, which is the onely thing in queſtion. So that although theſe 4. Preſidents were rancked among them, that may ſeem to make againſt the reſolution of the

the Houſe of Commons, which was done, both becauſe they have this ſmall colour in them for the other ſide, to any man that is acquainted with the nature and reaſons of the entries, and courſes of the Court of *Kings-bench*, and alſo all or ſome of them had been uſed in the late great caſe in the *Kings-bench*, as Preſidents that made againſt the *Liberty* claimed by the ſubject; yet in truth, all 4. of them do fully prove their reſolution, that is, they plainly ſhew that the Court of *Kings-bench* in every of them reſolved, that the Priſoners ſo committed were baylable, otherwiſe they had been remaunded, and not committed to the Marſhall of the *Kings-bench*. And this was the Anſwer to the Objection made by Mr. *Attorney* upon thoſe 4. Preſidents, being all of the time of King *Henry* the ſeventh.

The fifth of theſe 8. being *Edward Pages* caſe, in 7. *H.* 8. *Rot.* 23. Mr. *Attorney* objected thus, He ſaid that *Edward Page* was committed to the *Marſhal-ſea* of the houſhold, *per mandatum Domini Regis ibidem ſalvo cuſtodiendum*, &c. *Qui Committitur Mareſcallo*, &c. *Hoſpitii Domini Regis*: by which it appeareth, as he ſaid, that the Court remaunded him to the Priſon of the *Marſhal-ſea* of the houſhold: and he ſaid, that whereas it had been objected at the firſt conference, that there was ſome miſtaking in the entry; he conceived indeed that there was a miſtaking, but it was that the Clark had entred *Committitur* for *remittitur*, and that it ſhould have been *Qui remittitur Mareſcallo hoſpitii Domini Regis*: for whenever they remaunded the Priſoner, *Remittitur*, and not *Committitur* ſhould be entered. And that miſtaking being ſo rectified and underſtood, he conceived it was a direct preſident againſt the reſolution of the Houſe of Commons.

To this it was anſwered by the Gentlemen of the Houſe of Commons, That there was no doubt indeed, but that a miſtaking was in the entry by the Clark, but that the miſtaking was quite of another nature. The addition of thoſe words, *hoſpitii Domini Regis*, was the miſtaking, & the entry ſhould have been, *qui committitur Mareſcallo*, &c. onely; that is, he was committed to the Marſhall of the *Kings-Bench*; & ſo indeed the force of this Preſident ſhould be but juſt the ſame with the firſt fower: But the ignorance of the Clerk that entred it, and knew not to diſtinguiſh between the Marſhall of the houſhold and the Marſhall of the *Kings-bench*, was the cauſe of the addition of theſe words *hoſpitii Domini Regis*.

And to confirm fully this kinde of interpretation of that preſident, and of the miſtaking of it, it was obſerved by the Gentlemen of the Houſe of Commons, that there is in the Margin of the Roll an infallible Character that juſtifies as much. For by the courſe of that Court, whenſoever a Priſoner is committed to the Marſhall of the *Kings-bench* and not remaunded, the word *Mareſcallo* is written in the Margin by *Marr.* turned up; and that is never written there, but when the meaning and ſence of the Entry is, that the Priſoner is committed to the Priſon of the ſame Court. Now in this caſe *Marr.* in the

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Margin is likewiſe written: which moſt clearly ſhows that the truth of the Caſe was, that this *Page* was committed to the Marſhall of the *Kings-bench* and not remaunded, which if it had been, neither could the entry have been *Committitur*, nor ſhould the Margin of the Roll have *Mareſcallo* written in it.

And thus they have anſwered Mr. *Attorneys* objection touching this Preſident, and concluded that now, beſides the firſt four of the 8. they had another, and ſo 5. to prove that a Priſoner committed *per mandatum Domini Regis*, generally was baylable by the judgement of the Court, however it appears in theſe particulers that they were not bayled; which perhaps they were not, either becauſe they prayed it not, or becauſe they could not finde ſufficient bayl.

The 6. of theſe Preſidents, being that caſe of *Thomas Ceſars* in the 8. *Jacobi Regis*. Rot. 99. Mr. *Attorney* objected it thus; That *Ceſar* being committed *per mandatum Domini Regis* to the *Marſhal-ſea* of the houſhold, was returned upon *Habeas Corpus* to be ſo committed, and therefore detained in Priſon, and that the entry is, *Qui committitur priſonæ Mareſcal. predict.* by which it appears clearly that he was remaunded to the ſame Priſon from whence he came.

To this the Gentlemen of the Houſe of Commons gave this anſwer: They ſaid, that the uſual entire of a *Remittitur*, when it is to ſhew that the Court by way of judgement, or award upon reſolution, or debate remaunds the Priſoner, is, *remittitur quouſque*,&c. which is, *Remittitur quouſque ſecundum legem delibatus fuerit:* but when they adviſe, or give way to the Keeper of the Priſon to amend his return, or the like, then the entry is onely *remittitur* generally, or *remittitur priſonæ predict.* But it was indeed affirmed by Mr. *Keeling*, a Clark of experience in that Court, that the entry of a *remittitur* generally, or *remittitur priſonæ predictæ* was indifferently uſed for the ſame, that is, *remittitur quouſque*, &c. Yet it was expreſly ſhewed by the Gentlemen of the Houſe of Commons, that there was ſometimes a difference, and that ſo it might well be in this caſe. For in the laſt of theſe eight Preſidents, which is *Saltonſtalls* caſe, they obſerved that *remittitur priſonæ predictæ* is often uſed, and in that uſe it is plain that it is twice uſed onely for a remaunding, during the time that the Court gave leave to the Warden of the Fleet to amend his return; which ſhews plainly, that though ſometimes *remittitur* generally, and *remittitur quouſque*,&c. may mean the ſame, yet ſometimes it doth not. And that in this caſe of *Cæſar* it doth not mean any other, but onely ſo much as it doth twice in that of *Saltonſtalls* caſe, was proved alſo by a rule of the Court, which was cited out of the rule book of the Court of *Kings-bench*, by which rule the Court expreſly ordered, that unleſs the Steward and Marſhall of the houſhold did ſufficiently return the Writ of *Habeas Corpus* for *Cæſar*, that he ſhould be diſcharged. The words of the rule are, *Niſi predicti ſeneſcallus & Mareſcallus hoſpitii Domini Regis ſufficienter returnaverint breve de Habeas*

Corpus Tho. Ceſar die Mercurij proximæ poſt quindenam ſancti Martini, de priſona exonerabitur. And this was the opinion of the Court, that the Court was ſo farr from remaunding him upon the return, that they reſolved, that unleſs ſome better return were made, the Priſoner ſhould be diſcharged of his firſt impriſonment, though it appeared to them out of the body of the return (upon which they were onely to judge) that he was committed *per mandatum Domini Regis* onely: And the rule not onely ſhews the opinion of the Court then to have been agreeable with the reſolution of the Houſe of Commons, but alſo proves that *Remittitur* generally, or *Remittitur priſonæ predictæ* doth not always imply or remaunding upon judgment or debate. And this anſwer was given to this of *Ceſars* Caſe, that is the ſixt of this Number.

The ſeventh is the Caſe of *James Demetrius.* It was 12 *Jacobi Rot.* 153. Mr *Attorney* objected that this *Demetrius* and divers others being Brewers, were committed *per conſilium Domini Regis* to the *Marſhal-ſea* of the houſhould, and that upon the commitment ſo generally returned they were remaunded, and that the Entry was *immediate remittitur prefato Mareſcallo hoſpitii predicti*; where he obſerved that *immediate* ſhews that the Judges of that time were ſo reſolved of this Queſtion, that they remaunded them partly, as men that well knew what the Law was herein.

Here unto the Gentlemen of the Houſe of Commons gave theſe anſwers. Firſt, that the *Remittitur* in this Caſe is but as the other in *Ceſars*, and ſo proves nothing againſt them. Secondly, that *immediate* being added to it, ſhews plainly that it was done without debate, or any argument or conſideration had of it, which makes the authority of the preſidents to be of no force in point of Law; for Judgments and Awards given upon delibration onely and debate, are Proofs and Arguments of weight, and not any ſudden Act of the Court without debate or deliberation. And the Entry of *immediate* being propoſed to Mr. *Keeling*, it was confirmed by him, that by that Entry it appears by this courſe, that the remaunding of him was the ſelf ſame day he was brought, which as it was ſaid by the Gentlemen of the Houſe of Commons, might be at the riſeing of the Court, or upon adviſement, and the like. And this anſwer was given to this preſident of the Brewers.

The laſt of the 8. which Mr. *Attorney* objected is *Saltonſtals* Caſe in the 13. *Jacobi Regis.* He was committed *per mandatum Dominorum Regis de privato Conſilio*: and being returned by the Warden of the Fleet to be ſo, *remittitur priſonæ predictæ*, and in the 13. *Jac.* in the ſame year *remittitur* generally in the Roll: and theſe two make but one Caſe, and are as one preſident.

To this the Gentlemen of the Houſe of Commons anſwered, That it is true, the Rolls have ſuch Entries of *remittitur* in them generally, but that proves nothing upon the reaſon before uſed by them in

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Ceſars Caſe. But alſo *Saltonſtall* was committed for another cauſe beſides *per mandatum Dominorum Conſilii*, for a contempt againſt an order in *Chauncery*, and that was in the return alſo. And beſides, the Court as it appears in the Record, gave ſeveral days to the Warden of the *Fleet* to mend his return; which they would not have done, if they had conceived it ſufficient, becauſe that which is ſufficient needs no amendment.

To this Mr. *Attorney* replyed, that they gave him a day to amend his return, in reſpect of that part thereof that concerned the order in *Chancery*, and not in reſpect of that which was *per mandat. Concilij*.

But the gentlemen of the houſe of Commons anſwered, That it appears not any where, nor indeed is it likely at all, nor can be ſo reaſonably underſtood, becauſe if the other return *per mandatum Concilij* had been ſufficient by it ſelf, it appears fully that the Court conceived the return to be inſufficient.

And ſo the gentlemen of the Commons houſe concluded, that they had a great number of preſidents beſides the Acts of *Parliament*, and reaſons of Common Law, agreeable to their reſolution, and that there was not one preſident at all that made againſt them, but indeed, that almoſt all that were brought, as well againſt them as for them (if rightly underſtood) made fully to the maintenance of their reſolution; and that there was not one example or preſident of a *Remittitur* in any kinde upon this point, before that of *Ceſars* Caſe, which is before cleared with the reſt, and is but of late time, and of no moment againſt the reſolution of the houſe of Commons.

And thus for ſo much as concerned the preſidents of Record, the firſt day of the conference deſired by the Lords ended.

The next day they deſired another conference which the houſe of Commons; at which it pleaſed the Committee of both houſes to hear Mr *Attorney* again, to make what Objection he would againſt other parts of the Arguments formerly delivered by the houſe of Commons. He then Objected againſt the Acts of *Parliament* and againſt the reaſons of Law: and his Objections to theſe parts were anſwered, as appears in the anſwers by order given into the houſe of Commons by the gentlemen that made them. He Objected alſo upon the ſecond day againſt that ſecond kinde of preſidents, which are reſolutions of Judges in former times, and not of Records, and brought alſo ſome other Teſtimonies of opinions of Judges in former times touching this point.

Firſt, for that reſolution of all the Judges in *England* in 34. of Queen *Eliz.* mentioned and read in the Arguments made at the firſt conference, he ſaid, That it was directly againſt the reſolution of the Houſe of Commons, and obſerved the words of it to be in one place, that Perſons ſo committed by the *King* or the Councel may not be delivered by any of the Courts, *&c.* and in another, that if

the Cauſe were expreſſed either in generality, or ſpeciality, it was ſufficient: and he ſaid that the expreſſing of a cauſe in generality, was to ſhew the *Kings*, or Councels Command. And to this purpoſe he read the whole words of that reſolution of the Judges. Then he Objected alſo that in a report of one *Ruſwells* Caſe in the *Kings-bench*, in the 13. *Jac.* he found, that the opinion of ſome Judges of that Court (Sr. *Edward Coke* being then Chief Juſtice and one of them) was, that a Priſoner committed *per mandatum Domini Regis*, or *privati Conſilii*, without cauſe ſhewed, and ſo returned, could not be bayled, becauſe it might be matter of State, or *Arcanum Imperii*, for which he ſtood committed. And to this alſo he added an opinion that he found in a Journal of the Houſe of Commons of the 13. *Jac.* wherein Sr. *Edward Coke* ſpeaking to a Bill preferred for the explanation of *Magna Charta* touching impriſonment, ſaid in the Houſe, That a Priſoner ſo committed could not be enlarged by the Law, becauſe it might be Matter of State for which he was committed. And among theſe Objections of other nature alſo, he ſpake of the confidence that was ſhewed in behalf of the Houſe of Commons; & he ſaid, that it was not confidence could add any thing to the determination of the queſtion; but if it could, that he had as much reaſon for the other ſide againſt the reſolution of the Houſe, grounding himſelf upon the force of his Objections, which (as he conceived) had ſo weakned the Argument of the Commons Houſe, that notwithſtanding any thing yet Objected, they were upon clear reaſon confident of the truth of their firſt reſolution, grounded upon ſo juſt examination and deliberation taken by them. And it was obſerved to the Lords alſo, that their confidence herein was of another nature, and far greater weight then any confidence that could be expreſſed by Mr. *Attorney*, or whomſoever elſe, being of his Majeſties Councel learned.

To which purpoſe the Lords were deſired to take into their Memory the difference between the preſent quality of the Gentlemen that ſpake in behalf of the Houſe of Commons, and of the *Kings* learned Councel in their ſpeaking there, howſoever accidentally they were both men of the ſame profeſſion. For the *Kings* Councel ſpake as Councel perpetually retained by Fee, and if they made gloſſes and and what advantagious Interpretations ſoever, for their own part they did but what belonged to their place and quality, as Mr. *Attorney* had done: But the Gentlemen that ſpake in behalf of the Houſe of Commons, came there bound on the one ſide by the truſt repoſed in them by their Countrey that ſent them, and on the other bound alſo by an Oath taken by every of them before they ſit in the Houſe, to maintain and defend the rights and prerogatives of the Crown. So that even in the point of confidence alone, that of them that ſpake as retained Councel by perpetual Fee, and might by their place, being permitted to ſpeak, ſay what they would; and that of them that ſpake as bound to nothing but truth, but by ſuch a truſt and ſuch an Oath,

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were no way to be ſo compared, or Counterpoiſed, as if the one of them were of no more weight then the other.

And then the Objections before mentioned were alſo anſwered. For that of the reſolution of all the Judges of *England* in 34. *Eliz.* It was ſhewed plainly, it agreed with the reſolution of the Houſe of Commons. For although indeed it might have been expreſſed with more perſpicuity, yet the words of it, as they are, ſufficiently ſhew that the meaning of it is no otherwiſe. To that purpoſe, beſides the words of the whole frame of this reſolution of the Judges, as it is in the Coppy tranſcribed out of the Lord Chief Juſtice *Anderſons* book, written in his own hand (which book was there offered to be ſhewed alſo in behalf of the Houſe of Commons.) It was obſerved that the Records of the firſt part of it ſhew plainly, that all the Judges of *England* then reſolved that the Priſoners, ſpoken of in the firſt part of their reſolution, were onely Priſoners committed with cauſe ſhewed, for they onely ſaid they might not be delivered by any of the Courts, without due Trial by Law and Judgement of acquital had; which ſhews plainly that they meant, that by trial and acquital they might be delivered: but it is clear that no trial, or acquital can be had where is not ſome cauſe laid to their charge, for which they ought to ſtand committed. Therefore in that part of the reſolution, ſuch Priſoners are onely meant, as are committed without cauſe ſhewed, which alſo the Judges in that reſolution expreſly thought neceſſary, as appears in the ſecond part of the reſolution, wherein they have theſe words, If upon Return of the *Habeas Corpus* the cauſe of their commitment be certified to the Judges, as it ought to be, *&c.* by which words they ſhew plainly that every return of a commitment is inſufficient that hath not a cauſe ſhewed of it.

And to that which Mr. *Attorney* ſaid, as if the cauſe were ſufficiently expreſſed in generality, if the *Kings* Command, or the Councels were expreſſed in it; and as if that were meant in the reſolution for a ſufficient general cauſe: it was anſwered, That it was never heard of in Law, that the power, or Perſon that committed the Priſoner was underſtood for the *Cauſa captionis*, or *Cauſa detentionis*, but onely the reaſon why that Power, or Perſon committed the Priſoner: as alſo in common ſpeech, if a man ask why and for what cauſe a man ſtands committed, the anſwer is not, that ſuch a one committed him, but his offence, or ſome other cauſe is underſtood in the queſtion, and is to be ſhewed in the Anſwer. But to ſay that ſuch an one committed the Priſoner, is an anſwer to the queſtion who committed him, and not why, or for what cauſe he ſtands committed.

Then for that of the Coppy of the Report of 13. *Jac.* ſhewed forth by Mr. *Attorney*, it was anſwered, That the Report it ſelf, which had been before ſeen and peruſed among many other things at a Committee made by the Houſe, was of ſleight, or no Authority; for that it was taken by one, that was at that time a young Student

onely, and was a Reporter in the *Kings-bench*; and there was not any other Report to be found that agreed with it.

Secondly, although the Reports of young Students when they take the words of Judges, as they fall from their mouth at the Bench, and in the Perſon and form as they are ſpoken, may be of good credit; Yet in this Caſe there was not one word ſo reported; but in truth, there being three Caſes a time in the *Kings-bench*, one *Ruſwell*, and one *Allen*, and one *Saltonſtall*, every of which had ſomething of like nature in it; the Student having been preſent in the Court, made up the form of one Report, or Caſe, out of all thoſe three, in his own words, and ſo put it into his book; ſo that there is not a word in the Report but is framed according to the Students fancie, as it is written, and nothing is expreſſed in it as it came from the mouth of the Judges, otherwiſe then his fancie directed him.

Thirdly, there are in the Report plain falſhoods of Matter of Fact, which are to be attributed either to the Judges, or to the Reporter. It is moſt likely by all reaſon that they proceeded from the Reporters fault: but however thoſe Matters of falſhood ſhew ſufficiently, that the credit of the reſt, is of ſlight value for the purpoſe.

It is ſaid in the Report that *Harecourt* being committed by the Councel, was bayled in 40. *Eliz.* upon a privy Seal or a Letter, where as there was no ſuch thing in truth. And it is ſaid there, that no ſuch kinde of Letters are filed there in any caſe whatſoever. That reſolution of the Judges in 34. is miſcited there, and in 36. of Queen *Eliz.* and it is ſaid there that by that reſolution, a Priſoner returned to be committed by the command of the Councel, might not at all be delivered by the Court: whereas no ſuch thing is comprehended in in that reſolution.

But that which is of moſt moment is, that howſoever the truth of the report were, yet the opinion of the Judges, being ſudden without any debate, had of the caſe, is of ſleight moment. For in difficult points eſpecially, the graveſt and moſt learned men living may on the ſudden let fall, and that without diſparragement to them, ſuch opinions as they may well, and ought to change upon further enquiry and examination, and full debate had before them, and mature deliberation taken by them. Now plainly in that caſe of the 13. *Jacob.* there is not ſo much as pretence of any debate at Bar, or Bench. All that is reported to have been, is reported as ſpoken upon the ſudden: and can any man take ſuch a ſudden opinion to be of value, againſt ſolemne debates and mature deliberation ſince had of the point, and all circumſtances belonging to it? which have within this half year been ſo fully examined and ſearched into, that it may well be affirm'd, that the learned'ſt man whatſoever, that hath now conſidered of it, hath within that time, or might have, learned more reaſon of ſatisfaction in it, then ever before he met with. Therefore the ſudden

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opinions of any Judge to the contrary, is of no value here. Which alſo is to be ſaid of that opinion obviouſly delivered in the Commons Houſe, 18. *Jac.* as Mr. *Attorney* objected out of the Journal book of the Houſe.

But beſides, neither was the truth of that report of that opinion in the Journal any way acknowledged; For it was ſaid in behalf of the Houſe of Commons, that their Journals were for matter of order and reſolutions of the Houſe, of ſuch Authority as that they were as their Records; but for any particular Mans opinion noted in any of them, it was ſo far from being of any Authority with them, that in truth no particular opinion is at all to be entered in them: and that their Clerks offend when ever they do the contrary. And to conclude, no ſuch opinion whatſoever can be ſufficient to weaken the clear Law, comprehended in theſe reſolutions of the Houſe of Commons, grounded upon ſo many Acts of *Parliament*, ſo much reaſon of Common Law, and ſo many Preſidents of Record, and the reſolution of all the Judges of *England*, and againſt which no Law written, not one Preſident, not one reaſon hath been brought that makes any thing to the contrary.

And thus to this purpoſe ended the next day of the Conference deſired by the Lords, and had by a Committee of both Houſes.

The Proceedings againſt the Earle of Suffolk. 14. April 1628.

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This the Houſe took as a great injury done to the whole Houſe, Mr. *Selden* being imployed by them in the conference with the Lords in the great cauſe concerning the Liberty of the Perſons of the Subjects.

The Houſe preſently ſent Sr. *Robert Philips* with a meſſage to the Lords to this effect; He expreſſed the great care the Commons had upon all occaſions to maintain all mutual reſpect and correſpondency be-

onely, and was a Reporter in the *Kings-bench*; and there was not any other Report to be found that agreed with it.

Secondly, although the Reports of young Students when they take the words of Judges, as they fall from their mouth at the Bench, and in the Perſon and form as they are ſpoken, may be of good credit; Yet in this Caſe there was not one word ſo reported; but in truth, there being three Caſes a time in the *Kings-bench*, one *Ruſwell*, and one *Allen*, and one *Saltonſtall*, every of which had ſomething of like nature in it; the Student having been preſent in the Court, made up the form of one Report, or Caſe, out of all thoſe three, in his own words, and ſo put it into his book; ſo that there is not a word in the Report but is framed according to the Students fancie, as it is written, and nothing is expreſſed in it as it came from the mouth of the Judges, otherwiſe then his fancie directed him.

Thirdly, there are in the Report plain falſhoods of Matter of Fact, which are to be attributed either to the Judges, or to the Reporter. It is moſt likely by all reaſon that they proceeded from the Reporters fault: but however thoſe Matters of falſhood ſhew ſufficiently, that the credit of the reſt, is of ſlight value for the purpoſe.

It is ſaid in the Report that *Harecourt* being committed by the Councel, was bayled in 40. *Eliz.* upon a privy Seal or a Letter, where as there was no ſuch thing in truth. And it is ſaid there, that no ſuch kinde of Letters are filed there in any caſe whatſoever. That reſolution of the Judges in 34. is miſcited there, and in 36. of Queen *Eliz.* and it is ſaid there that by that reſolution, a Priſoner returned to be committed by the command of the Councel, might not at all be delivered by the Court: whereas no ſuch thing is comprehended in in that reſolution.

But that which is of moſt moment is, that howſoever the truth of the report were, yet the opinion of the Judges, being ſudden without any debate, had of the caſe, is of ſleight moment. For in difficult points eſpecially, the graveſt and moſt learned men living may on the ſudden let fall, and that without diſparragement to them, ſuch opinions as they may well, and ought to change upon further enquiry and examination, and full debate had before them, and mature deliberation taken by them. Now plainly in that caſe of the 13. *Jacob.* there is not ſo much as pretence of any debate at Bar, or Bench. All that is reported to have been, is reported as ſpoken upon the ſudden: and can any man take ſuch a ſudden opinion to be of value, againſt ſolemne debates and mature deliberation ſince had of the point, and all circumſtances belonging to it? which have within this half year been ſo fully examined and ſearched into, that it may well be affirm'd, that the learned'ſt man whatſoever, that hath now conſidered of it, hath within that time, or might have, learned more reaſon of ſatisfaction in it, then ever before he met with. Therefore the ſudden

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opinions of any Judge to the contrary, is of no value here. Which alſo is to be ſaid of that opinion obviouſly delivered in the Commons Houſe, 18. *Jac.* as Mr. *Attorney* objected out of the Journal book of the Houſe.

But beſides, neither was the truth of that report of that opinion in the Journal any way acknowledged; For it was ſaid in behalf of the Houſe of Commons, that their Journals were for matter of order and reſolutions of the Houſe, of ſuch Authority as that they were as their Records; but for any particular Mans opinion noted in any of them, it was ſo far from being of any Authority with them, that in truth no particular opinion is at all to be entered in them: and that their Clerks offend when ever they do the contrary. And to conclude, no ſuch opinion whatſoever can be ſufficient to weaken the clear Law, comprehended in theſe reſolutions of the Houſe of Commons, grounded upon ſo many Acts of *Parliament*, ſo much reaſon of Common Law, and ſo many Preſidents of Record, and the reſolution of all the Judges of *England*, and againſt which no Law written, not one Preſident, not one reaſon hath been brought that makes any thing to the contrary.

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betwixt both Houſes: Then he informed them of a great injury done by the Earle of *Suffolk* to the whole houſe, and to Mr. *Selden* a particuler Member thereof, who by their Command had been imployed in the late conference with their Lordſhips: That the Houſe was very ſenſible thereof: and, according to former Preſidents, made them truly acquainted with it, and demaunded Juſtice againſt the Earle of *Suffolk*: he read the words, ſaying, they were ſpoken to Sir *John Strangwayes*, a Member of their Houſe.

After a ſhort ſtay the Lords called for the Meſſenger, to whom the Lord *Keeper* gave this Anſwer; He ſignified the great deſire and care of their Lordſhips to maintain and increaſe the correſpondencies betwixt both Houſes, and as a Teſtimony thereof they had partly taken into conſideration the charge: That the Earle of *Suffolk*, being a Man of great place and Honour, had voluntarily proteſted upon his Honour and Soul, that there paſſed no ſuch words as thoſe from him to Sr. *John Strangwayes*: And the Lord *Keeper* wiſhed that their Lordſhips ſpeedy proceedings in this buſineſs, might teſtifie their love and good will to the Commons Houſe.

The next day, being the 15. of *April*, Sr. *John Strangwayes* made a Proteſtation openly in the Houſe, wherein he avowed that (notwithſtanding the Earls denial) he did ſpeak thoſe words poſitively unto him, and would maintain it any way fitting a Member of that Houſe, or a Gentleman of Honour.

They ordered that this Proteſtation ſhould be entered into the Journal book, and that a Committee ſhould take into conſideration what was fit for the Houſe to proceed to for the juſtification of Sr. *John Strangwayes*, and what was fitting to be done in this Caſe, and to examine Witneſs of the proof of the words.

Upon the 17. day Sr. *John Elliot* reported what the Committee had done. That they had ſent for and examined Sr. *Chriſtopher Nevill*; who related, that upon *Saturday* being in the Lords Committee Chamber, the Earle of *Suffolk* ſaid thus to him: Mr. *Attorney* hath cleared the buſineſs, and hath made the cauſe plain on the *Kings* ſide; and further ſaid, Mr. *Selden* hath razed a Record, and hath deſerved to be hanged, and the Lower Houſe ſhould do well to joyn with the Higher in a Petition to the *King* to hang him; and added as a reaſon: For Mr. *Selden* went about, and took a courſe to divide the *King* from his people: or words to that effect. And being asked whether he conceived that thoſe words of dividing the *King* from his people, had relation to the whole and general action of Mr. *Selden* before the Lords, or to the particuler of razing a Record; he conceived they were referred to the general action.

They had examined one Mr. *Littleton*, who confeſſed he heard the Earle of *Suffolk* ſpeak to a Gentleman, whom he knew not, words to this affect, *viz*. That he would not be in Mr. *Seldens* Coat for 10000 *L.* and that Mr. *Selden* deſerved to be hanged.

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The ſecond part of this Report concerned the particuler of Sr. *John Strangwayes*, wherein though the Committee found no Witneſs to prove the words ſpoken to Sr. *John Srangwayes*, yet there were many circumſtances which perſwaded them of the truth thereof.

1. That the ſame words in the ſame ſyllables were ſpoken to Sr. *Chriſtopher Nevill*, and that the Earle as he called to him Sr. *John Strangwayes*, ſo he called to him Sr. *Chriſtopher Nevill*.

2. That the Earle of *Suffolk* called Sr. *John Strangwayes* to him and ſpake to him, was proved by Sr. *George Fane*, and Sr. *Alexander* Sr. *John*, at which time the Earle ſeemed full of that which he delivered.

3. That Sr. *John Strangwayes* inſtantly after his diſcourſe with the Earle of *Suffolk* went to the Earle of *Hartford*, and delivered him the paſſages betwixt them, being the ſame related in the houſe.

4. From the unwillingneſs of Sr. *John Strangwayes*, though called upon by the Houſe, to teſtifie againſt the Earle, till it was reſolved by queſtion he ſhould do it: from a probabillity, that had not theſe words been ſpoken to himſelf, it is like he would have produced Sr. *Chriſtopher Nevill*, from whom he alſo heard the ſame.

5. From the worth of the Gentleman, and his ingenious proteſtation in the Houſe, That he was ready to juſtifie the truth of what he ſaid in any courſe the Houſe ſhould thinck meet, or was fit for a Gentleman of Honour.

Hereupon the Houſe reſolved by queſtion.

1. That the Earle of *Suffolk*, notwithſtanding his denial, had laid a moſt unjuſt and ſcandalous imputation upon Mr. *Selden*, a Member of the Houſe, being imployed in the ſervice of the Houſe, and therein upon the whole Houſe of Commons.

2. That this Houſe upon due examination is fully ſatisfied that Sr. *John Strangwayes*, (notwithſtanding the Earle of *Suffolks* denial) hath affirmed nothing but what is moſt true and certain.

3. That theſe particulers and additions be again preſented to the Lords, and the Earle of *Suffolk* newly charged at the Bar, and the Lords deſired to proceed in Juſtice againſt the Earle, and to inflict ſuch puniſhment upon him as an offence of ſo high a nature, being againſt the Houſe of Commons, doth deſerve.

Sr. *John Elliot* was partly ſent with the Meſſage to the Lords; who after a while returned this anſwer, That they had taken the Meſſage into conſideration, and would further take it into due conſultation, and in convenient time would return an anſwer by Meſſengers of their own.

Several Speeches made at the debates concerning the KINGS Propoſitions for ſupply.

Mr. *ALFORD.*

THat to anſwer punctually to every Article, was but to diſcover the *Kings* wants, which is neither ſafe nor fit, as the world now goes; nor is it good for him to ask more then we can give, nor for us to offer diſproportionably: withall it might draw to a preſident for the Subjects to make and maintain Wars.

Sr. *ROBERT MAUNSELL.*

IT had been much better for us to have taken care for theſe proviſions 3. years ſince. His deſire is not to have the Commons overburthened. That 7. of theſe Propoſitions are not to be neglected, *viz.* The ſafe guarding of the Coaſts, The defence of the *Elve*, The defence of *Rochell*, The increaſing of the *Navy*, The repairing of the Forts, The diſcharge of the Arrears of Merchants ſhips, and the defence of the *King* of *Denmark*: the other to be delayed to our next meeting at *Michalmas*.

Sr. *FRANCIS SEYMOUR.*

THat as ſupply is deſired, ſo are we met for that purpoſe; but if by thoſe late courſes we be diſabled, then he is not to expect it from us: our greateſt grievances being his *Majeſties* preſſing wants; two ſubſedies formerly given, and five forcibly and unadviſedly taken, are great motives not to be too forward. That we have too haſtily drawn two great Enemies upon us, and all this done by men of ſmall, or no judgement.

Sr. *PETER HAYMAN.*

THat vaſt Propoſitions are delivered to us in ſhew, which he deſires he may give an Eſtimate of, that firſt brought them in.

Mr. *PYMM.*

THat in no Caſe it is fit to examine the Propoſitions, eſpecially of the Arrearages of the Merchant ſhips, and for preparation of the forreign Wars.

Secretary *COKE.*

THat three things eſpecially are to be taken into conſideration; the defence of *Rochell*, the *Elve*, and the *Forts*. He perſwades to give bountifully; and though the people do not preſently pay it, yet

yet it gives the *King* credit abroad, and much advanceth his affairs. We have already by our carriage and temper taken the *Kings* heart, which he adviſeth we make good uſe of.

Sr. *DUDLY DIGGS.*

FOr to try and examine faithfully the Propoſitions, he refers it to the Judgement of the Houſe, whether it be fit to handle the buſineſs in order, or to give in groſs, conſidering that the Bill of *Tonnage* and *Poundage* is now brought into the Houſe, which he thinks they conceive to be given for the ſafe-guarding of the Seas.

Mr. *SPENCER.*

IN no Caſe to enter into particulars. That formerly hath been given 5. Subſedies for the repairing of the Forts, and no penny beſtowed on them, but the money waſted in diſhonour.

Mr. *JOHN ELLIOT.*

THat our late diſaſters at *Calis* & *Ree* might diſcourage us from thinking of forreign attempts. At *Calis*, when we neglected the taking of the *Spaniſh* Fleet in the Harbour, nothing attempted at our landing but drincking and diſorder, no good account given at the return. Concerning ſervice at S. *Martins*, the whole account carried againſt the Judgement of the beſt Commanders, which makes all the World deſpiſe and condemne us, beſides the inriching of the Enemy with kindeneſſes, and parling with the Forts with preſents, which time will bring to light.

Sr. *EDWARD COKE.*

THat when *England* ſtood alone without friends and addition of Kingdoms, as 42. *E.* 3. the *King* (wholly guided by his Parliament-Councel) brought alwayes home Victories both againſt *France* and *Scotland*, his 4. reaſons of it were, 1. Good Councel, 2. Valiant Leaders, 3. Timely proviſion, 4. Good imployment and fore-caſt. And likewiſe in *Ric.* 2. *Hen.* 4. *Hen.* 5. He deſires to give plentifully, and that in groſs, not to examine the particulers, alleadging *Solomon's* rule, *qui repetit, ſeparat*: for (ſaid he) if we rip them up, we ſever them for ever. And in that Propoſition for ſetting forth 30. ſhips, ſhall we both pay *Tonnage* and *Subſedies* for them? This will draw a dangerous Preſident. Likewiſe that other in ſetting forth (God knows whether) a 1000. Horſe and 10000. Foot; being not able to ſet them forth, how ſhall we look to maintain them abroad? That in an Iland the defenſive War is beſt and moſt proper. To conclude, our guift in groſs will ſerve beſt with theſe times, for by that courſe we ſhall ſeem to allow all the Propoſitions, and except againſt none.

Sr. *THOMAS WENTWORTH.*

THat he will look after the Iland of *England* and no further, except our Fortunes were better. That as he is bound in duty to the *King*, ſo in faithfull love to his Countrey. That our freedom and Liberty being known and granted, we then may proportion our guift. His concluſion was, that the final debate of this queſtion may be laid aſide untill *Friday*, and in the mean time go on with our grievances.

Sr. *HENRY MARTIN.*

NOt to daſh the Ship of the Common-wealth twice upon one Rock. The diſeaſe that we are now ſick of, is the *Kings Evil*, which none but himſelf can cure; and *Jacob's* example is our beſt Predent, who wreſtling with the Angel, would not give over till he got the bleſſing. That our often repetition of grievances breeds hate and diſlike. And becauſe we have not to give what is asked, Yet to give freely what we intend to give; and ſo by this freeneſs we ſhall win the *Kings* heart.

Mr. *KERTON.*

HE deſires to know the Rock, to the end we may avoid it; and not to go back, but forward in our concluſion.

Sr. *ROBERT PHILIPS.*

HIs good hopes are in his *Majeſties* royal care and wiſdom. That the free and great Councel is the beſt: but time and hope of change is coming towards us; *Rome* and *Spain* trench deeply into our Councels. That heretofore there hath been a fair progreſs on both parts, according to the ſaying of the late *King*, *If the* Parliament *did, or ſhould give more then the Countrey could bear, they gave him a purſe with a knife in it.*

Serjant *HOSKINS.*

THat knowing our own rights, we ſhall be better enabled to give. Two legs go beſt together, our juſt grievances and our ſupply; which he deſires may not be ſeperated, for by preſenting them together, they ſhall be both taken, or both refuſed.

Ser-

Serjant Ashleys Argument, ſeconding Mr. Attorney, in the behalf of his Majestie.

I Hope it will be neither offenſive nor tedious to your Lordſhips, if I ſaid ſomewhat to ſecond Mr. *Attorney*: which I the rather deſire, becauſe yeſterday it was taken by the Gentlemen of, and argued on the behalf of the Commons, that the cauſe was as good as gained by them, and yielded by us, in that we acknowledged the Statute of *Magna Charta*, and the other ſubſequent Statutes to be yet in force: for on this they inforced this general concluſion.

That therefore no man could be committed, or impriſoned, but by due proceſs, preſentment or indictment.

Which we ſay is a *non ſequitur* upon ſuch our acknowledgement; for then it would follow by neceſſary conſequence, that no impriſonment could be juſtified but by proceſs of Law, which we utterly deny. For in the cauſe of the Conſtable, cited by Mr. *Attorney*, it is moſt clear that by the ancient Law of the Land a Conſtable might *ex officio*, without any Warrant, Areſt and reſtrain a man to prevent an affray, or to ſuppreſs it. And ſo is the Authority 38. *Hen.* 8. *Brooks abſtract.* So may he, after the affray, apprehend and commit to Priſon the Perſon that hath wounded a man that is in peril of death, and that without Warrant, or Proceſs; as it is in 38. *E.* 3. *fol.* 6.

Alſo any man that is no Officer may apprehend a Fellon without Writ, or Warrant, or purſue him as a Wolf, and as a common enemy to the Common-wealth, as the Book is 14. *H.* 8. *fol.* 16. So might any one arreſt a Night-walker, becauſe it is for the common profit, as the reaſon is given 4. *Hen.* 7. *fol.* 7.

In like manner the Judges in theſe ſeveral Courts may commit a man, either for contempt, or miſdemeanour, without either Proceſs or Warrant, other then take him Shrief, or take him Marſhall, or Warden of the Fleet. And the Adverſaries will not deny, but if the *King* will alleadge cauſe, he may commit a man *per mandatum* as the Judges do, without Proceſs, or Warrant.

And various are the caſes that may be inſtanced, wherein there may be a Lawfull commitment without Proceſs. Wherefore I do poſſitively and with confidence affirm, that if the impriſonment be Lawfull, whether it be by Proceſs, or without Proceſs, it is not prohibited by the Law.

Which being granted, then the queſtion will aptly be made, whether the *King* or Councel may commit to Priſon *per legem terræ* were onely that part of the Municipal Law of this Realm, which we call the *Common Law*: for there are alſo divers Juriſdictions in this Kingdom which are alſo ſo reckoned the Law of the Land.

As in *Kendrick's* Caſe in the report, *fol.*8. the 1. *Eccleſiaſtical* Law is held the Law of the Land, to puniſh Blaſphemies, Schiſmes, Hereſies, Simony, Inceſt, and the like, for a good reaſon there rendred, *viz.* That otherwiſe the *King* ſhould not have power to do Juſtice to his Subjects in all Caſes, nor to puniſh all Crimes within his Kingdom.

The *Admiral's* Juriſdiction is alſo *Lex terræ*, for things done upon the Sea: but if they exceed their Juriſdiction, a prohibition is awarded upon the Statute of *nullus liber homo*; by which appears that the Statute is in force, as we have acknowledged.

The *Martial* likewiſe, though not to be exerciſed in times of peace, when recourſe may be had to the *Kings* Courts, yet in times of invaſion, or other times of Hoſtility, when an Army Royal is in the field, and offences are committed, which require ſpeedy reformation, and cannot expect the ſolemnity of legal Trials; then ſuch impriſonment, execution, or other Juſtice done by the Law *Martial* is Warrantable, for it is then the Law of the Land, and is *Jus gentium*, which ever ſerves for a ſupply in the defeat of the Common Law, when ordinary proceeding cannot be had.

And ſo it is alſo in the caſe of the Law of the *Merchant*, which is mentioned 13 *E.*4 *fol.*9.10. where a Merchant ſtranger was wronged in his goods, which he had committed to a Carrier to convey to *Southampton*, and the Carrier imbezelled ſome of the goods; for remedy whereof the Merchant ſued before the Councel in the *Star-Chamber* for redreſs. It is there ſaid thus, Merchant ſtrangers have by the *King* ſafe conduct for coming into this Realm: therefore they ſhall not be compelled to attend the ordinary Trial of the Common Law, but, for expedition, ſhall ſue before the *Kings* Councel, or in Chancery, *de die in diem & de horâ in horam*: where the Caſe ſhall be determined by the Law of Merchants.

In the like manner it is in the Law of State; when the neceſſity of State requires it, they do and may proceed to natural equity; as in thoſe other Caſes where the Law of the Land provides not, there the proceeding may be by the Law of natural equity: and infinite are the Occurrences of State unto which the Common Law extends not. And if theſe proceedings of State ſhould not alſo be accounted the Law of the Land, then we do fall into the ſame inconveniency mentioned in *Cawdries* Caſe, that the *King* ſhould not be able to do Juſtice in all Caſes within his own Dominions.

If then the *King* nor his Councel may not Commit, it muſt needs follow, that either the *King* muſt have no Councel of State, or having ſuch a Councel, they muſt have no power to make Orders, or Acts of State; Or if they may, they muſt be without means to compell obedience to thoſe Acts; and ſo we ſhall allow them Juriſdiction, but not compel obedience to thoſe Acts, but not correction, which will be then as fruitleſs as the Command. *Fruſtra potentia quæ nunquam redigitur in ſtatutum.* Where as the very Act of *Weſtminſter* firſt, ſhews

ſhews plainly that the *King* may commit, and that his commitment is lawfull, or elſe that Act would never have declared a man to be irreprieveable when he is committed by the Command of the *King*, if the Law-makers had conceived that his commitment had been unlawfull. And Divine truth informs us, that the *Kings* have their power from God, the *Pſalmiſt* calling them *the children of the moſt High*; which is in a more ſpecial manner underſtood then of other men, for all the Sons of *Adam* are by election the Sons of God, and all the Sons of *Abraham* by recreation, or regeneration, the Children of the moſt High, in reſpect of the power which is committed unto them, who hath alſo furniſhed them with ornaments and arms fit for the exerciſing of that power, and hath given them Scepters, Swords, and Crowns: Scepters to veſtitute and Swords to execute Laws, and Crowns, as Enſigns of that power and dignity, with which they are inveſted: ſhall we then conceive that our *King* hath ſo far tranſmitted the power of his Sword to inferiour Magiſtrates, that he hath not reſerved ſo much Supream power, as to commit an Offender to priſon? 10. *H. 6. fol. 7.* It appears that a Steward of a Court Leet may commit a man to priſon, and ſhall not the *King* from whom all inferior power is deduced have power to commit? We call him the fountain of Juſtice, yet when theſe ſtreams and rivolets, which flowe from that Fountain come freſh and full, we would ſo far exhauſt that Fountain, as to leave it dry, but they that will admit him ſo much power do require the expreſſion of the cauſe: I demand whether they will have a general cauſe alleadged, or a ſpecial; if general as they have inſtances for Treaſon, Fellony, or for Contempt, for to leave fencing and to ſpeak plainly as they intend it, If loan of money ſhould be required and refuſed, and thereupon a commitment enſue, and the cauſe ſignified to be for a contempt, this being unequal inconvenience from yielding the remedy is ſought for the next Parliament: would be required the expreſſion of the particular cauſe of the commitment: Then how unfit would it be for *King* or Councel in Caſes to expreſs the particuler Cauſe, its eaſily to be adjudged when there is no State, or pollicy of government, whether it be Monarchial, or of any other frame, which have not ſome ſecrets of State, not communicable to every vulgar underſtanding.

I will inſtance but one, If a *King* imploy an Ambaſſadour to a Forreign Countrey of States with inſtructions for his Negotiation, and he purſue not his inſtructions, whereby diſhonour and dammage may enſue to the Kingdom, is not this commitment?

And yet the particuler of his inſtruction and the manner of his miſcarrying is not fit to be declared to his Keeper, or by him to be certified to the Judges, where it is to be opened and debated in the preſence of a great audience.

I therefore conclude for offences againſt the State in Caſe of State Government, the *King* and his Councel have lawfull power to puniſh by

by impriſonment without ſhewing particuler cauſe, where it may tend to the diſcloſing of State-Government. It is well known to many that know me, how much I have laboured in this Law of the Subjects Liberty very many years before I was in the *Kings* ſervice, and had no cauſe then to ſpeak, but to ſpeak *ex animo*, yet did I then maintain and publiſh the ſame opinion which now I have declared concerning the *Kings* Supream power in matters of State, and therefore can not juſtly be cenſured to ſpeak at this preſent onely to merit of my Maſter, But if I may freely ſpeak my own underſtanding, I conceive it to be a queſtion too high to be determined by any legal direction, for it muſt needs be an hard caſe of contention, when the Conquerour muſt ſit down with irreparable loſſes, as in this Caſe: If the Subject prevails he gains Liberty, but looſeth the benefit of that State-Government, by which a Monarchie may ſoon become an Anarchie, or if the State prevails, it gives abſolute Soveraignty but looſeth Subjects: not their ſubjection, for obedience we muſt yield, though nothing be left us but prayers and tears, but yet looſeth the beſt part of them which is their affections whereby Soveraignty is eſtabliſhed: and the Crown formerly fixt on his Royal head, between two ſuch extreams there is not way to moderate, but to finde a *medium* for the accommodation of the difference, which is not for me to preſcribe, but onely to move your Lordſhips to whom I ſubmit.

After Mr. *Serjeant* his ſpeech ended, my Lord *Preſident* ſaid thus to the Gentlemen of the Houſe of Commons. That though at this free conference, Liberty was given by the Lords to the *Kings* Councel to ſpeak what they thought fit for his Majeſty, Yet Mr. Serjeant *Aſhley* had no Authority, or direction from them to ſpeak in that manner he hath done.

Mr. Noye his Argument the 16. of April 1628.

HE offered an anſwer to the inconveniences preſented by Mr. *Attorney*, which were 4. in Number.

Firſt where it was objected that it was inconvenient to expreſs the cauſe for fear of divulging *Arcana Imperii*, for hereby all may be diſcovered and abundance of Traitors never brought to Juſtice.

To this that Learned Man anſwered.

That the Judges by the intention of the Law are the *Kings* Councel, and the ſecrets may ſafely be committed to all, or ſome of them who might adviſe whether they will bayl him, and here is no danger to *King*, or ſubjects, for their Oath will not permit them to reveal the ſecrets of the *King*, nor yet to detain the Subjects long, if by Law he be to be bayled.

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Secondly, for that Objection of the Children of *Odonell*, he laid this for a ground, that the *King* can do no wrong, but in Caſes of extream neceſſity, we muſt yield ſometimes for the preſervation of the whole State *ubi unius damnum utilitate publica rependitur*, he ſaid there was no truſt in the Children of Traitours, no wrong done if they did *tabe facere*, or *marceſere in Carcere*. It is the ſame Caſe of neceſſity as when to avoid the burning of a Town, we are forced to pull down an honneſt mans Houſe, or to compell a man to dwell by the Sea-ſide for defence, or fortitude. Yet the *King* cannot do wrong, for *potentia juris eſt non injura: Ergo* the Act of the *King* though to the wrong of another is by the Law made no wrong, as if he commanded to be kept in Priſon, yet he is reſponſal for his wrong, he quoted a book, 42. 6. *Aſſ. Port.*

Thirdly, the inſtance made of *Weſtminſter*. Firſt he ſaid there was a great difference between thoſe 3. Mainprize, Bail, and Replevin: The Statute ſaith a man cannot be repleiued: *Ergo* not bayled *non ſequitur*, Maniprize under pain, Bayl body for body, no pain ever in Court to be declared, Replevin neither by ſurety nor bayl of Replevin never in Court, the Statute ſaith a man cannot be Repleiued: *Ergo* not bayled *non ſequitur*.

Fourthly, where it is ſaid that bayl is *ex gratia*, he anſwers, that if the Priſoner comes to *Habeas Corpus*, then it is not *ex gratia*, Yet the Court may adviſe, but mark the words *ad ſubjiciendum & recipiendum prout Curia conſideraverit*, now it is impoſſible the Judges ſhould do ſo, if no cauſe be expreſſed, for if they know no cauſe, he may bring the 1.2.3. and fourth *Habeas Corpus*, and ſo infinite till he finde himſelf a perpetual Priſoner, ſo that no cauſe expreſſed is worſe for a man, then the greateſt cauſe or Villany that can be imagined, and thus far proceeded that learned Gentleman.

Mr. *GLANVILES* Argument.

HE ſaid that by favour of the Houſe of Commons he had liberty to ſpeak, if opportunity were offered, he applies his anſwer to one particuler of Mr. *Attorney* who aſſigned to the *King* 4. great truſts, (1.) of War, (2.) Coins, (3.) Denizens, (4.) Pardons; Is aſſented unto, that the *King* is truſted with all theſe 4. legal Prerogatives, but the Argument followeth not, the *King* is truſted with many Prerogatives: *Ergo* in this *non ſequitur non eſt ſufficiens enumeratio partium*, he ſaid he could anſwer theſe particulars with 2. rules, whereof the firſt ſhould wipe of the firſt and the ſecond, and the other, the third and fourth.

The firſt rule is this, there is no fear of truſting the *King* with any thing, but the fear of ill Councel, the *King* may eaſily there be truſted where ill Councel doth not ingage both the *King* and Subjects, as it doth in matter of War and Coin, If he miſcarry in the Wars, it is not alwayes *pecuum Achiro*, but he ſmarts equally with the people, If he

abaſe his Coin, he looſeth more then any of his people: *Ergo* he may ſafely be truſted with the flowers of the Crown, War, and Coin.

The ſecond rule he began was this, when the *King* is truſted to confer grace, it is one thing, but when he is truſted to infer an injury it is another matter: The former power cannot by miſcouncelling be brought to prejudice another, The latter may if the *King* pardoneth a guilty Man he puniſheth not a good ſubject, if he denizen never ſo many ſtrangers it is but *damnum ſine injuria*, we allow him a liberty to confer grace, but not without cauſe to infer puniſhment; and indeed he cannot do injury, for if he command to do a Man wrong the command is void *& alter fit Author*, and the Actor becomes the wrong doer. Therefore the *King* may be ſafely truſted with War, Coin, Denizens, and Pardons, but not with a power to impriſon without expreſſion of Cauſe, or limmitation of time, becauſe as the Poet tells us *Libertas potius auro.*

The Anſwer of the Judges for matter of Fact upon the HABEAS CORPUS, 21. April.

THe Chief Juſtice ſaith, they are prepared to obey our Command, but they deſire to be adviſed by us, whether they being ſworn upon penalty of forfeiting Body, Lands, and Goods, into the *Kings* hands to give an account to him, may without Warrant do this.

The Duke ſaid he had acquainted the *King* with the buſineſs, and for ought he knoweth he is well content therewith. But for better aſſurance he hath ſent his brother of *Angleſey* to know his pleaſure.

Devonſhire ſaith, if a complaint be made by a mean Man againſt the greateſt Officer in this place, he is to give an account of his doings to this Houſe.

Biſhop of *Lincoln* ſaith, this motion proceeded from him, and ſo took it for clear, that there was an appeal from the Chancery to a higher Court then the *Kings-bench*, and in that Court hath ever given an account of their doings.

The Lord *Say* ſaith, he wondred there ſhould be any queſtion made of this buſineſs, becauſe in his opinion this being the higheſt Court did admit of no appeal. The Preſident ſaid the Judges did not do this by way of appeal, but as the moſt common way for them, this being a matter concerning the *Kings* prerogative: Lord *Say* ſaith, if they will not declare themſelves, we muſt take into conſideration the point of our priviledge.

The Duke ſaith, this was not done by the Judges as fearing to anſwer, but of reſpect to the *King*. And now his brother was come with anſwer from the *King*, that they might proceed.

Order

Order was taken that this paſſage ſhould not be entered into the Journal Book, and ſo Judge WHITLOCK ſpake.

MY Lords we are by your appointment here ready to clear any aſperſion of the Houſe of Commons in their late preſentment upon the *Kings-bench*, that the Subject was wounded in this Judgement there lately given. If ſuch a thing were my Lords, your Lordſhips, not they have the power to queſtion and Judge the ſame, But my Lords I ſay there was no Judgement given whereby either the prerogative might be inlarged, or the eight of the ſubject trenched upon. It is true my Lords, in Michaelmas Term laſt fower Gentlemen petitioned for a *Habeas Corpus*, which they obtained, and Councel was aſſigned unto them, the return was *per ſpialem mandatum Domini Regis*, which likewiſe was made known unto us under the hands of eighteen privy Councellours. Now my Lords, if we had delivered them preſently, upon this, it muſt have been, becauſe the *King* did not ſhew cauſe, wherein we ſhould have judged the *King* had done wrong, and this is beyond our knowledge, for he might have committed them for other matters then we could have imagined. But they might ſay thus, they might have been kept in Priſon all their dayes, I anſwer no, but we did remit them, that we might better adviſe of the matter, and they the next day might have had a new Writ, if they had pleaſed, but they ſay, we ought not to have denied bayl, I anſwer, if we had done ſo, it muſt needs have reflected upon the *King* that he had unjuſtly impriſoned them, and it appears in *Dyer*. 2. *Eliz*. that divers Gentlemen being committed, and requireing *Habeas Corpus*, ſome were bayled, others remitted, whereby it appears, much is left to the diſcretion of the Judges.

For that which troubleth ſo much *remittitur quouſque*, this my Lords was onely, (as I ſaid before) to take time what to do, and whereas they will have a difference betwixt *remittitur* and *remittitur quouſque*, my Lords I confeſs I can finde none, but theſe are new inventions to trouble old Records. And herein my Lords we have dealt with knowledge and underſtanding, for had we given a Judgement, the party muſt thereupon have reſted, every Judgement muſt come to an iſſue, in matter, in fact, or demur in point of Law, here is neither, therefore no Judgement.

For endeavouring to have a Judgement entered, it is true, Mr. *Attorney* preſſed the ſame for his Maſters ſervice, but we being ſworn to do right betwixt the *King* and his ſubjects commanded the Clark to make no entry, but according to the old form, and the rule was given by the Chief Juſtice alone. I have ſpent my time in this Court, and I ſpeak confidently, I did never ſee nor know by any Record that upon

ſuch a Return as this, a man was bayled, the *King* not firſt conſulted with in ſuch a Caſe as this.

The Commons Houſe do not know what Letters and Commands we receive, for theſe remain in our Court, and were not viewed by them, for the reſt of the Matters preſented by the Houſe of Commons they were not in agitation before us, whether the *King* may commit and how long he may detain a man committed, therefore having anſwered ſo much as concerneth us, I deſire your Lordſhips good conſtructions of what hath been ſaid.

Judge JONES

SAid he was here to deliver before us what judgement was given before them concerning the *Habeas Corpus*, he anſwered, no Judgement was given, and the Matter of Fact was ſuch as my brother delivered unto you yeſterday. Theſe 4. Gentlemen were committed to the Fleet-Gate-Houſe and Marſhall of the *Kings* Houſe-hold. 4. Returns were made upon the Writs, and every one of them had a Councellour appointed, who had Coppies of the Returns. A rule was granted, their Councel heard, and exception taken to the Return, becauſe it did not ſhew cauſe of their caption.

Theſe were of no force in the opinion of the Judges, the next exception was, becauſe no cauſe of their commitment was ſhewed, which the Judges held to be all one in point of Law. Then my Lords, they alleadged many Preſidents and Statutes of themſelves, which the *Kings* Attorney anſwered. That Perſons committed by the *King*, or Councel were never bayled, but his pleaſure was firſt known.

We agreed at the Chamber of the Chief Juſtice that all the Statutes alleadged are in force, but whether we ſhould bayl them or no, was the queſtion, therefore we remitted them *quouſque*. After which Mr. *Attorney* required a Judgement might be entered, I commanded the Clark he ſhould not ſuffer any ſuch thing to be done, becauſe we would be better adviſed.

But ſome will ſay our Act is otherwiſe, I anſwered no, for we have done no more then we do upon ordinary Writ, when we purpoſe to be better adviſed, and that was onely an Interlocutorie order. But my Lords put the caſe a *Habeas Corpus* ſhould be granted for one that is committed by the Houſe of Commons, would they (thinck you) take it well he ſhould be bayled at his firſt coming to the Court: I thinck they would not, and I thinck the *King* would have done ſo in this caſe, now my Lords, there is a Petition of Right, and a Petition of Grace, to be bayled is a matter of Grace, therefore if a man be brought upon an *Habeas Corpus*, and not bayled, he cannot ſay the Court hath done him any wrong. I have now ſerved ſeven years Judge in this Court, and my conſcience beareth me witneſs that I have not wronged the ſame, I have been thought ſometimes too forward for the Liberty of the Subject. I am my ſelf *Liber homo*, my

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Anceſtors gave their voice with *Magna Charta*. I enjoy that Houſe ſtill, which they did, I do not now mean to draw down Gods wrath upon my poſterity, and therefore I will neither advance the *Kings* prerogative, nor leſſen the Liberty of the Subject to the danger of either *King*, or People, this is my profeſſion before God and your Lordſhips.

Judge DODDERIDGE

SAith it is no more fit for a Judge to decline to give an account of his doings, then for a Chriſtian of his Faith. God knoweth, I have endeavoured alwayes to keep a good conſcience, for a troubled one, who can bear, the Kingdom holds of none but God, and Judgements do not paſs privately in Chambers, but publick in Court, where every one may hear, which cauſeth Judgement to be given with maturity. Your Lordſhips have heard the particulers delivered by my brethren, how that Councel being aſſigned to thoſe 4. Gentlemen, in the latter end of Michaelmaſs Term their Cauſe received hearing, and upon conſideration of the Statutes and Records we found ſome of them to be according to the good old Law of *Magna Charta*, but we thought that they did not come ſo cloſe to this Caſe, as that bayl ſhould be thereupon preſently granted. My Lords, the *Habeas Corpus* conſiſteth of 3. parts, the Writ, the Return upon the Writ, or ſchedule and the Entry, or rule reciting the *Habeas Corpus*, and the Return together with the opinion of the Court, either a *remittitur*, or *traditur* in *ballium*. In this Caſe a *remittitur* was granted, which we did that we might take better adviſement upon the Caſe, and upon the *remittitur* (my Lords) they might have had a new Writ the next day, and I wiſh they had, becauſe it may be they had ſeen more, and we had been eaſed of a great labour. And my Lords, when the *Attorney* upon the *remittitur* preſſed an Entry, we all ſtraitly charged the Clark that he ſhould make no other Entry then ſuch as our Predeceſſors had uſually made in like Caſes: for the difference (my Lords) betwixt *remittitur* and *remittitur quouſque* I could never yet finde any, I have now ſat in this Court 15. years, and I ſhould know ſomething, ſurely if I had gone in a Mill ſo long, duſt would cleave to my cloaths. I am old and have one foot in the grave, therefore I will look to the better part as near as I can. But *omnia habere in memoria & in nullo errare divinum potiùs eſt quam humanum.*

THE LORD CHIEF JUSTICE

SAith, he ſhall not ſpeak with confidence, unleſs he might ſtand right in the opinion of the Houſe, and proteſted what he ſpake the day before, was not ſaid by him with any purpoſe to trench upon the Priviledges of this Houſe, but out of that reſpect which by his place he thought he owed to the *King*, he ſaid concerning the

point, he was to ſpeak of, that he would not trouble the Lords with things formerly repeated, wherein he concurred with his brethren. He ſaid, if it were true, the *King* might not commit, they had done wrong in not partly delivering, for my Lords (ſaith he) theſe Statutes and good Laws being all in force, we meant not to trench upon any of them, moſt of them being Commentaries upon *Magna Charta*: but I know not any Statute that goeth ſo far, that the *King* may not commit. Therefore juſtly we think, we delivered the interpretation thereof to that purpoſe: for my Lords, *Lex terræ* is not to be found in this Statute, they gave me no example, neither was there any Cauſe ſhewed in the Return. A Preſident (my Lords) that hath run in a ſtorm doth not much direct us in point of Law, and Records are the beſt Teſtimonies. Theſe Preſidents they brought, being read, we ſhewed them wherein they were miſtaken, if we have erred *erramus cum Patribus*, and they can ſhew no Preſident, but that our Predeceſſors have done as we have done, ſometimes bayling, ſometimes remitting, ſometimes diſcharging. Yet we do never bayl any committed by the *King*, or his Councel till his pleaſure be firſt known. Thus did the Lord Chief Juſtice *Coke* in *Raynards* Caſe. They ſay this would have been done if the *King* had not written, but why then was the Letter read and publiſhed and kept, and why was the Town Clark ſent carefully to enquire (becauſe the Letter ſo directed) whether theſe men offered for bayl, were ſubſedy men? the Letter ſheweth alſo that *Beckwith* was committed for ſuſpition of being acquainted with the Gun-Pouder-Treaſon, but no proof being produced the *King* left him to be bayled.

The Earle of WARVVICKS ſpeech, 21. April 1628.

MY Lords I will obſerve ſomething out of the Law wherein this liberty of the Subjects Perſon is founded, and ſome things out of Preſidents which have been alleadged. For the Law of *Magna Charta*, and the reſt concerning theſe points, they are acknowledged by all to be of force, and that they were to ſecure the Subjects from wrongfull impriſonment as well, or rather more concerning the *King* then the Subject, why then beſides the grand *Charter* and thoſe 6. other Acts of *Parliament*? in the very point we know that *Magna Charta* hath been at leaſt 30. times confirmed, ſo that upon the matter we have 6. or 7. and thereby Acts of *Parliament* to confirm this liberty, although it was made a matter of deriſion the other day in this Houſe.

One is that of 36. *E.* 3. *N°.* 9. and another in the ſame year, *N°.* 20. not printed, but yet as good as thoſe that are, and that of 42. *E.* 3. *cap.* 3. ſo expreſs in the point, eſpecially the Petition of the Commons,

mons that year, which was read by Mr. *Littleton* with the *Kings* anſwer ſo full, and free from all exception, to which I refer your Lordſhips that I know not have any thing in the World can be more plain, and therefore if in *Parliament* ye ſhould make any doubt of that which is ſo fully confirmed in *Parliament*, and in caſe ſo clear, go about by new gloſſes to alter the old and good Law, we ſhall not onely forſake the ſteps of our Anceſtors, who in Caſes of ſmall importance would anſwer *nolumus mutare leges Angliæ*, but we ſhall yield up and betray our right in the greateſt inheritance the Subjects of *England* hath, and that is the Laws of *England*, and truely I wonder how any man can admit of ſuch a gloſs upon the plain Text, as ſhould overthrow the force of the Law, for whereas the Law of *Magna Charta* is, that no Free-man ſhall be impriſoned, but by lawfull judgement of his Peers, or the Law of the Land, the *King* hath power to commit without Cauſe, which is a ſence not onely expreſly contrary to other Acts of Parliament, and thoſe eſpecially formerly cited, but againſt Common ſence. For Mr. *Attorney* confeſſeth this Law concerns the *King*, why then, where the Law ſaith the *King* ſhall not commit, but by the Law of the Land? the meaning muſt be as Mr. *Attorney* would have it, that the *King* muſt not commit, but at his own pleaſure, and ſhall we think that our Anceſtors were ſo fooliſh to hazard their Perſons & Eſtates, and labour ſo much to get a Law, and to have it 30. times confirmed, that the *King* might not commit his Subjects, but at his own pleaſure, and if he did commit any of his Subjects without a Cauſe ſhewen, then he muſt lie during pleaſure, then which nothing can be imagined more ridiculous, and contrary to true reaſon.

For the Preſidents I obſerve that there hath been many ſhewen, by which it appears to me evidently that ſuch as have been committed by the *Kings* Councel, they have been delivered upon *Habeas Corpus*, and that conſtantly. It is true that ſome Preſidents were brought on the *Kings* part, that when ſome of theſe perſons deſired to be delivered by *Habeas Corpus*, the *King*, or his Councel ſignified his Majeſties pleaſure that they ſhould be delivered, or the *Kings Attorney* hath come into the Court and related the *Kings* Command, but this ſeems to make for the Subject; For that being in his Majeſties power to deliver them, who by his ſpecial Command were impriſoned. May not we well think that his Majeſty would rather at that time have ſtayed their deliverance by Law, then furthered it with his Letters, and made the Priſoners rather beholding to him for his grace and mercy then to the Judges for Juſtice, had not his Majeſty known that at that time they ought to have been delivered by Law? I think no man would imagine a wiſe *King* would have ſuffered his Grace and Prerogative (if any ſuch Prerogative were) to be ſo continually queſtioned, and his Majeſty and his Councel ſo far from commanding the Judges not to proceed to deliver the Priſoner by them committed, without Cauſe ſhewn, as that on the other ſide, which is all the force of theſe

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Preſidents, the *King* and the Councel ſignified to the Judges that they ſhould proceed to deliver the parties, certainly if the *King* had challenged any ſuch Prerogative, that a Perſon committed without any cauſe ſhewn ought not to be delivered by the Judges without his conſent, it would have appeared by one Preſident, or other amonſt all that have been produced, that his Majeſty would have made ſome claim to ſuch a Prerogative. But it appears to the contrary that in many of theſe caſes the *King*, or his Councel did never interpoſe, and where they did, it was alwayes in affirmation and incouragement to that Court to proceed. And beſides the writing of Letters from his Majeſty to the Judges to do Juſtice to his Majeſties Subjects, may with as good reaſon be interpreted that without thoſe Letters they might not do Juſtice, alſo the *King* ſignified his willingneſs, that ſuch & ſuch Perſons which were committed by him ſhould be delivered, therefore they could not be delivered without it, which is a ſtrange reaſon. So that findeing the Laws ſo full, ſo many, and ſo plain in the point, and findeing that when ever any were committed without cauſe ſhewn, brought their *Habeas Corpus*, they were delivered, and no Command ever given to the contrary, or claim made on the *Kings* part to any ſuch Prerogative. I may ſafely conclude as the Houſe of Commons have done, and if any one Preſident, or two of late can be ſhewn that the Judges have not delivered the Priſoners ſo committed, I think it is their fault, and to be enquired of, but contrary, it ſeems to me to be an undoubted Liberty of the Subject, that if he be committed without cauſe, or without cauſe ſhewn, yet he may have ſome ſpeedy courſe to bring himſelf to Trial, either to juſtifie his own innocencie, or to receive puniſhment according to his fault, for God forbid that an innocent man by the Laws of *England* ſhould be put in worſe caſe then the moſt grievous Malefactors are, which muſt needs be, if this ſhould be, that if a cauſe be ſhewed, he may have his Trial, but if none, he muſt lie and pine in Priſon during pleaſure. Mr. *Serjeant Aſhley*, the other day told your Lordſhips of the Embleme of a *King*, but by his leave made wrong uſe of it. For a *King* bears in one hand the Globe, and in the other the golden Scepter the tipes of Soveraignty and mercie, but the Sword of Juſtice is ever carried before him by a Miniſter of Juſtice, which ſhews Subjects may have their remedies for unjuſtice done, and appeals done to higher powers, for the Laws of *England* are ſo favourable to their Princes, as they can do no unjuſtice.

Therefore I will conclude as all diſputes I hold do, *Magna eſt veritas & prævalebit*, ſo I make no doubt we living under ſo good a Prince as we do, when this is repreſented unto him, he will anſwer us *Magna eſt Carta & prævalebit.*

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The Arch-Bishops of Canterburies Speech, at the Conference of both Houſes, 25. April 1628.

GEntlemen of the Houſe of Commons, the ſervice of the *King* and ſafety of the Kingdom do call on us, my Lords, to give all convenient expedition to diſpatch ſome of thoſe great and weighty buſineſſes, for the better effecting whereof, my Lords have thought fit to let you know that they do in general agree with you, and doubt not, but you will agree with us to the beſt of your power to maintain and ſupport the fundamental Laws of the Kingdom, and the fundamental Liberties of the Subject, for the particulers which may hereafter fall in debate, they have given me in charge to let you know, that what hath been preſented by you to their Lordſhips, they have laid nothing of it by, they are not out of love with any thing you have tendered to them, they have voted nothing, neither are they in love with any thing proceeding from themſelves, for that which we ſhall ſay and propoſe unto you is out of an intendment to invite you to a mutual and free conference, that you with confidence may come to us, and we with confidence may ſpeak to you, ſo that we may come to a concluſion of thoſe things which we both unanimouſly deſire, we have reſolved of nothing, defined, or determined nothing, but deſire to take you with us, praying help of you as you have done of us. My Lords have thought upon ſome Propoſitions which they have ordered to be read here, and then left with you in writing, that if it ſeem good to you, we may uniformly concur for the ſubſtance, and if you differ, that you may be pleaſed to put out, or add, or alter, or diminiſh as you ſhall think fit, that ſo we the better come to the end, that we do both ſo deſireouſly embrace.

Then the 5. Propoſitions were read by the Lord Bishop of Norvvhich.

The 5. Propoſitions, 25. April 1628.

1. THat his Majeſty would be pleaſed gratiouſly to declare, that the good old Law, called *Magna Charta*, and the 6. Statutes conceived to be Declarations, or Explanations of that Law, do ſtand ſtill in Force to all intents and purpoſes.

2. That his Majeſty would be pleaſed gratiouſly to declare, that according to *Magna Charta* and the Statutes aforeſaid, as alſo accord-

ing to the moſt ancient Cuſtomes and Laws of this Land, every free Subject of this Realm hath a fundamental propriety in his good, and a fundamental Liberty of his Perſon.

3. That his Majeſty would be pleaſed gratiouſly to declare, that it is his Royal pleaſure to ratifie and confirm unto all, and every his faithfull and Loyal Subjects all their antient, ſeveral, juſt Liberties, Priviledges and Rights, in as ample and beneficial manner to all intents and purpoſes, as their Anceſtors did enjoy the ſame, under the Government of the beſt of his moſt Noble Progenitors.

4. That his Majeſty would be pleaſed gratiouſly to declare, for the good contentment of his Loyal Subjects, and for the ſecureing them from future fears, that in all cauſes within the Cognizance of the Common-Law, and concerning the Liberty of his Subjects, his Majeſty would proceed according to the Laws eſtabliſhed in the Kingdom, and in no other manner or wiſe.

5. And as touching his Majeſties Royal Prerogative intrincical to his Soveraignty, and intruſted him from God *ad communem totius populi ſalutem & non ad deſtructionem*, his Majeſty would reſolve not to uſe or divert the ſame to the prejudice of any his loyal People in the propriety of their goods and liberty of their Perſons. And in caſe for the ſecurity of his Majeſties Royal Perſon, the Common ſafety of his People, or the peaceable Government of his Kingdom, his Majeſty ſhall finde juſt cauſe of State to impriſon, or reſtrain any mans Perſon: his Majeſty would gratiouſly declare, that within a convenient time he ſhall and will expreſs the cauſe of his commitment, or reſtraint, either general, or ſpecial, and upon a cauſe ſo expreſſed, will leave him immediatly to be tried according to the Common Juſtice of the Kingdom.

Then Sr. Dudley Diggs in the behalf of the Commons, ſaith.

MY Lords, it hath pleaſed Almighty God many wayes to bleſs the Knights, Cittizens, and Burgeſſes now aſſembled in Parliamen, with great comforts and ſtrong hopes, that this will prove as happy a Parliament as ever was in *England*, and in their Conſultations for the ſervice of his Majeſty, and the ſafety of this Kingdom, one eſpecial comfort and ſtrong hope hath riſen from the continued good reſpects, which your Lordſhips ſo nobly from time to time have been pleaſed to ſhew unto them particulerly at this preſent in your ſo Honourable profeſſion to agree with them in general, in deſire to maintain and ſupport the fundamental Laws and Liberties of *England*. The Commons have commanded me in like ſort, they have been, are, and will be as ready to propugne the juſt Prerogatives of his Majeſty, of which in all their Arguments, ſearches of Records and reſolutions,

ſolutions, they have been moſt carefull according to that which formerly was, and now again is proteſted by them.

Another Noble Argument of your Honourable diſpoſition towards them is expreſt in this, that you are pleaſed to expect no preſent anſwer from them, who are (as your Lordſhips in your general wiſdoms they doubt not have conſidered) a great body that muſt adviſe upon all new Propoſitions, and reſolve upon them before they can give anſwer according to the ancient uſage of our Houſe, but is manifeſt in general (God be thanked for it) there is a great concurrence of affection to the ſame end in both Houſes, and ſuch a good Harmony, that I intreat your Lordſhips leave to borrow a compariſon from nature, or natural Philoſophy, as two Lutes well ſtrung and tun'd brought together, if one be plaid on little ſtraws, or ſticks will ſtir upon the other though it lye ſtill, ſo though we have no power to reply, yet theſe things ſaid and propoſed, cannot but work in our hearts, and we will faithfully report theſe paſſages to our Houſe, from whence in due time we hope your Lordſhips ſhall receive a contentfull Anſwer.

Sr. Benjamin Ruddierds Speech, 28. April 1628.

Mr. *Speaker*,

WE are now upon a great buſineſs, and the manner of handling it may be as great as the buſineſs it ſelf. I need not tell you that Liberty is a pretious thing, for every man may ſet his own price upon it, and he that doth not value it, deſerves to be valued accordingly, for my own part I am clear without ſcruple, that, what we have reſolved it according to Law, and if any Judge in *England* were of a contrary opinion, I am ſure we ſhould have heard of him before now. Out of all queſtion the very point, the ſcope and drift of *Magna Charta* was to reduce the Regal to a Legal power in matters of impriſonment, or elſe it had not been worth ſo much contending for.

But there have been Preſidents brought to prove the practiſe and interpretation of the Law. I confeſs I have heard many Preſidents of utillity and reſpect, but none at all of truth, or of Law: Certainly there is no Court of Juſtice in *England* that will diſcharge a Priſoner committed by the *King Rege inconſulto*, without acquainting the *King*; yet this good manners was never made, or mentioned as a legal part of the delivery.

It is Objected, that the *King* ought to have a truſt left and depoſited in him, God forbid, but he ſhould: And I ſay that it is impoſſible to take it from him, for it lies not in the wit of man, to deviſe ſuch a Law as ſhould be able to comprehend all particulers, all accidents, but that extraordinary caſes muſt happen, which when they come, If

they be disposed of for the Common good, there will be no Law against them, yet must the Law be general, for otherwise admissions and exceptions will fret, and eat out the Law to nothing. God himself hath constituted a general Law of nature to govern the ordinary course of things, he hath made no Laws for miracles. Yet there is this observation of them, that they are rather *præter naturam* then *contra naturam*, and alwayes *propter bonos fines*, for *Kings* Prerogatives are rather besides the Law then against it, and when they are directed to right ends for the publick good, they are not onely concurring Laws, but even Laws in singularity and excelling. But to come nearer Mr. *Speaker* let us consider where we are now, what steps we have gone and gained, the *Kings* learned Councel have acknowledged all the Laws to have been still in force, the Judges have disallowed any Judgement against these Laws, the Lords also have confessed, that the Laws are in full strength; they have further retained our resolution intire, and without prejudice: All this hitherto is for our advantage, but above all his Majesty himself being publickly present declared by the mouth of my Lord *Keeper* before both the Houses, that *Magna Charta*, and the other six Statutes are in force, that he will maintain his Subjects in the liberty of their Persons and the propriety of their goods, that he will govern according to the Laws of the Kingdom, this is a solemne and bindeing satisfaction expressing his gracious readines to comply with his People in all their reasonable and just desires. The *King* is a good man, and it is no diminution to be called so, for whosoever is a good man shall be greater then a *King* that is not so.

The *King* certainly is exceeding tender of his present Honour and of his fame hereafter, he will think it hard to have a worse mark set upon him and his Government then any of his Ancestors by extraordinary restraints: his Majesty hath already intimated unto us by a message that he doth willingly give way to have the abuse of power reformed, by which I do verily believe that he doth very well understand what a miserable power it is, which hath produced so much weakness to himself and to the Kingdom, and it is our happiness that he is so forward to redress it. For my own part I shall be very glad to see that good old decrepit Law of *Magna Charta*, which hath so long kept in and lain as it were bedrid, I should be glad, I say to see it walk abroad again with new vigour and lustre attended by the other six Statutes, questionless it will be a general hartning to all the People. I doubt not but by a debating conference with the Lords we shall happily fall upon a fair and fit accommodation concerning the Liberty of our Persons and propriety of our goods. I hope we have a Bill to agree in the point against imprisonment for Loanes, or privy Seals, as for intrincical power and reason of State they are matters in the clouds, where I desire we may leave them, and not meddle in them at all, least by way of admittance we may loose somewhat of that which is

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our own already. Yet this (by the way) I will ſay of reaſon of State, that in the latitude (as it is uſed) it hath eaten out almoſt not onely all the Laws, but all the Religion of Chriſtendom. Now Mr. *Speaker*, I will onely remember you of one precept, and that of the wiſeſt *Man*, *Be not overwiſe, be not over juſt*, and he cited his reaſon *for why wilt thou be deſolate*. Sir, if Juſtice and Wiſedom may be ſtretcht to deſolation, let us thereby learn, that moderation is the virtue of virtues, and the wiſedom of wiſedomes.

Let it be our Maſter-piece, ſo to carry our buſineſs as we may keep Parliaments on foot, for as long as they are frequent there will be no irregular power, which though it cannot be broken at once, yet in ſhort time it will fade and moulter away, there can be no total and final loſs of Liberty, but by loſs of Parliaments as long as they laſt, what we cannot get at one time we may have at another.

Let no man think that what I have ſaid is the language of a private end, my aim is upon the good ſucceſs of the whole, for I thank God my minde ſtands above any fortune that is to be gotten by baſe and unworthy means.

No man is bound to be rich, or great, no, nor to be wiſe, but every man is bound to be honneſt, out of which heart I have ſpoken.

The Lord KEEPERS ſpeech, 28. April 1628.

MY Lords, Knights, and Burgeſſes of the Houſe of Commons. I cannot but remember the great and important affairs concerning the ſafety, both of State and Religion, declared at firſt from his own mouth to be the cauſe of aſſembling this Parliament, the fear whereof, as it doth dayly increaſe with his Majeſty ſo it ought to do, and his Majeſty doubts not but it doth ſo with you, ſince the danger encreaſeth every day both by effluction of time, and preparation of the enemy. Yet his Majeſty doth well weigh, that this expence of time hath been occaſion by the debate that hath riſen in both Houſes, touching the Liberty of both Subjects, in which as his Majeſty takes in good part the purpoſe and intent of the Houſes ſo clearly and frequently profeſſed, that they would not deminiſh nor blemiſh his Royal and juſt Prerogative, ſo he preſumes ye will all confeſs it a point of extraordinary grace and Juſtice in him to ſuffer it to reſt ſo long in diſpute without interruption. But now his Majeſty conſidering the length of time which it hath already taken, and fearing nothing ſo much any future loſs as that whereof every hour and minute is ſo precious, and foreſeeing that ordinary way of debate though never ſo carefull, muſt in regard of the forms of both Houſes neceſſarily take up more time then the affairs of Chriſtendom can permit, his Majeſty out of his great and Princely care hath thought it expe-

dient to ſhorten the buſineſs by declaring the clearneſs of his own heart and intention. And therefore he hath commanded me to let you know, that he holds the Statute of *Magna Charta*, and the other 6. Statutes, inſiſted on for the Subjects Liberty, to be all in force, and aſſureth you that he will maintain all his Subjects in the juſt freedom of their Perſons and in ſafety of their eſtates, and that he will Govern according to the Laws and Statutes of the *Realm*, and that you ſhall finde as much ſecurity in his Majeſties Royal word and promiſe, as in the ſtrength of any Law you can make, ſo that hereafter you ſhall never have cauſe to complain. The concluſion is this, that his Majeſty prayeth that God (who hath hitherto bleſſed this Kingdom, and hath put into his heart this day to come unto you) will make the ſucceſs hereof happy both to *King* and People. And therefore he deſireth that no doubt, or miſtruſt may poſſeſſe any man, but that you all will proceed ſpeedily and unanimouſly with the buſineſs.

The Biſhop of Exceters Letter ſent to the Houſe of Commons, 28. April 1628.

Gentlemen,

FOr God ſake be wiſe in your well meant Zeal, why do you argue away precious time that can never be revoked, or repaired? Woe is me, while we diſpute our friends periſh and we muſt follow them, where are we, if we break, (and I tremble to think) we cannot but break if we hold ſo ſtiff. Our Liberties and proprieties are ſufficiently declared to be ſure and legal, our remedies are clear and irrefragable, what do we fear, every Subject ſees the way now chalked out, for future Juſtice, and who dares henceforth tread beſides it? Certainly whileſt Parliaments live we need not miſdoubt the violations of our Freedoms and Rights: May we be but where the Law found us, we ſhall ſufficiently enjoy our ſelves and ours; It is no ſeaſon to ſearch for more! Oh let us not whileſt we over-rigedly plead for an higher ſtrain of ſafety, put our ſelves into a neceſſity of ruine and utter deſpair of redreſs: Let us not in the ſuſpition of *Evils* that may be, caſt our ſelves into a preſent confuſion. If you love your ſelves and your Countrey, remit ſome thing of your own terms, and ſince the ſubſtance is yielded by your Noble *Patriots*, ſtand not too rigorouſly upon points of circumſtance: Fear not to truſt a good *King*, who after the ſtrict Laws made, muſt be truſted with the execution. Think that your Countrey, nay Chriſtendom lies on the mercie of your preſent reſolutions. Relent or farewell welfare.

From him whoſe faithfull heart bleeds in a vowed ſacrifice for his King *and Countrey.*

Exceter.

Mr. Hack-

Mr. Hackvvell of Lincolns-Inne his Speech in the Lower-Houſe, 1. May 1628.

Sir,

I Choſe rather to diſcover my weakneſs by ſpeaking, then to betray my conſcience by ſilence: My opinion is, that we ſhall do well totally to omit our reſolution out of this Bill, and rely onely upon a confirmation of the Laws.

The Objections made againſt this Opinion are two.

THe firſt is, that we ſhall thereby recede from our own reſolution.

The ſecond, that by a bare confirmation of the Old Laws without the inſerting of our reſolution, by way of explanation, we ſhall be but in the ſame caſe as before.

For the firſt, that though we deſire onely a confirmation without adding of our reſolution, we do not thereby recede from our reſolution, I reaſon thus:

Our reſolution was drawn out of the ſence of thoſe Laws, which are now deſired to be confirmed, ſo that no queſtion can be made by any of us that have thus declared our ſelves, but that our reſolution is virtually contained in thoſe Laws, if that be ſo, how can our acceptance of a confirmation of theſe Laws be a departure from our reſolution.

Nay, rather we think the contrary is true, he that doubts, that by confirmation of theſe Laws our reſolution is not hereby confirmed, doubts whether we have juſtly deduced our reſolutions out of thoſe Laws, and ſo calls our reſolution into queſtion.

This Argument alone is in my opinion a full anſwer to that firſt Objection, that in deſiring of a bare confirmation of thoſe Laws we depart from our reſolutions. This Argument alone is in my opinion a full anſwer to that firſt Objection: that in deſiring of a bare confirmation of theſe Laws, we depart from our reſolution.

The ſecond Objection is: that if we have nothing but a confirmation, we are in no better caſe then we were before thoſe late violations of the Law.

This I deny, and do confidently affirm, that although we have no more then a confirmation of thoſe Laws which are recited in the Bill that is now before us, we ſhall depart hence in far better caſe then we came, and that in divers reſpects.

Firſt,

First, ſome of the Laws recited in this Bill, and deſired to be confirmed are not printed Laws, and are known to few Profeſſors of the Law, and much leſs to others, and yet they are Laws of as great conſequence for the liberty of the Subject, if not of greater then any that are printed as namely 25. *E.* 3. *N°.* 1. That loanes againſt the will of the lender are againſt reaſon and the freedom of the Realm, 36. *E.* 3. *N°.* 9. By which impriſonments by ſpecial commandment without due Proceſs are forbidden. Theſe two are not printed.

The excellent Law *de tollagio non Concedendo* in print hath in a publick Court been by a great Councellour ſaid to be but a *Charter*, and no Law.

The Satute 1. *Rich.* 3. againſt benevolences is by ſome opinions in print an abſolute Law, if we can get all theſe goods Laws beſides thoſe 6. other, which are expoſitions of *Magna Charta* in the point of the freedom, and our Perſons to be confirmed and put in one Law to the eaſie view of all men, is not our Caſe far better then when we came hither?

Secondly, will not the occaſion of the making of this Law of confirmation ſo notoriouſly known be tranſmitted to all poſterity, certainly it will never be forgotten, that the occaſion thereof was the impriſonment of thoſe worthy Gentlemen for not lending, and the reſolution in the *Kings-bench* in denying to bayl them, and is not the occaſion of the making of a Law a good rule to expound it. If ſo, then by giving a confirmation upon this occaſion we have bettered our Caſe very much.

Thirdly, have not the Judges in the *Kings-bench* in open Parliament upon our complaint diſclaimed to have given any Judgement in the point? which generally before by the Parliament was otherwiſe conceived, for now they ſay, it was but an Award and no Judgement, Will ſuch a Notorious Act upon ſo important an occaſion in ſo publick a place be quickly forgotten? Nay, will not the memorie of it for ever remain upon Records, is not our Caſe then much better then when we came hither.

Fourthly, will not the reſolution of this Houſe, and all our Arguments and reaſons againſt impriſonment without a Cauſe expreſſed (which no doubt by the courſe we have taken will be transferred to poſterity) be a great means to ſtay any Judge hereafter for declaring any Judgement to the contrary, eſpecially if there be likelyhood of a Parliament, is not our Caſe in this very much amended?

Laſtly, have we not received Propoſitions from the Lords, wherein (amongſt other things) they declared, that they are not out of love with our proceedings, is not this a great ſtrenghtning to it? but after ſo long debate amongſt them about it, they cannot take any juſt exception to it; and doth not this alſo much amend our Caſe?

From all theſe reaſons, I conclude that the ſecond Objection, that by a confirmation we are in no better caſe then when we came together, is alſo a weak Objection.

Now

Now for reaſons to move us to proceed in this courſe of accepting a confirmation. Firſt we have his Majeſties gracious promiſe to yield to a confirmation of the old Laws, from which we may reſt moſt aſſured he will not depart, If we tender him with all our Propoſition to be enacted, we have cauſe to doubt that we ſhall looſe both the one and the other.

Secondly, we are no leſs aſſured of the Lords joyning with us, for in their Propoſitions ſent to us they have delivered themſelves to that purpoſe: This is then a ſecure way of getting ſomewhat of great advantage to us, as we have great hopes, and in a manner aſſurance on this ſide: So on the other ſide we have great doubts and fears, that by offering our reſolution to be enacted, we ſhall looſe all.

For firſt we have had already experience of the Lords, that they are not very foreward to joyn with us in a Declaration of our Propoſition to be Law, If they ſtumble at a Declaration, much more will they in yielding to make Law in the ſame point.

And have we not much more cauſe to doubt that his Majeſty will not yield unto it, ſeeing it toucheth him ſo near, Is it not the notice of his pleaſure that hath wrought thus with the Lords?

If we ſhould clog our Bill with our Propoſition, and it ſhould be rejected by the Lords, or by the *King*, is not our reſolution much weakned by it? And are we not then in far worſe caſe then before we made it? Our reſolution for the rejecting of our Propoſition, will tend to a Juſtification of all that hath been done againſt us in this great point of our Liberty.

Let us then like wiſe-men conform our deſire to our hopes, and guide our hopes by probabilities, other deſires and other hopes are but vain.

This is my poor opinion in this weighty buſineſs.

Secretary Cokes Meſſage, 1. May 1628.

Mr. *Speaker*,

I Have a very ſhort meſſage to deliver from his Majeſty, that ſhews both his Royal care to be rightly underſtood of this Houſe, and no leſs care to underſtand us in the beſt part, and to ſhew clearly it ſhall not be his fault if this be not a happy Parliament: His Majeſty hath commanded me to deſire this Houſe clearly to let him know, whether they will reſt upon his Royal word and promiſe, made at ſeveral times, and eſpecially by my Lord *Keepers* Speech made in his own preſence, which if they do, he doth aſſure you that it ſhall be royally and really performed.

After ſpeaking of himſelf, and the nature of his place under his Majeſty, he proceeded in theſe words.

GIve me leave freely to tell you that I know by experience, that by the place I hold under his Majeſty, if I will diſcharge the duty of my place and the Oath I have taken to his Majeſty, I muſt commit, and neither expreſs the cauſe to the Jaylor, nor to the Judges, nor to any Councellour in *England*, but to the *King* himſelf, yet do not think I go without ground of reaſon, or take this power committed to me to be unlimmitted, Yea rather it is to me a charge, burthen, and danger, for if I by this power ſhall commit the pooreſt porter, if I do it not upon a juſt cauſe, if it may appear, the burthen will fall upon me heavier then the Law can inflict, for I ſhall looſe my credit with his Majeſty and my place. And I beſeech you conſider whether thoſe that have been in the ſame place have not committed freely, and not any doubt made of it, nor any complaint made by the Subject.

Veneris, 2. May 1628.

A Report was this day made from the grand Committee, for grievances concerning the cauſe of *Nicholas Clegat* Cittizen, and Vintner of *London*, impriſoned by the Lord Major and Aldermen of the ſaid Citie, for refuſing to lend a certain ſumme of money aſſeſſed upon him by the Company of Vintners of *London*, whereof he is free, towards the proportion of money impoſed upon the Company, by an Act of Common-Councel of the ſaid Citie, in purſuance of a contract of Land with his Majeſty. By which report it appeared that the ſaid grand Committee had unanimouſly agreed that the ſaid Citie might make Acts of Councel, ſo as they were conſonant to Law and reaſon, and for regulating and deciphering of trade agreeable to reaſon and the Law of the Realm, and might leavy money of the Cittizens by Act of Common-Councel for building, or repairing of their Walls, Gates, or making or cleanſing of Sewers, or other like cauſes tending to the general and publick good, and welfare of the Citie, or towards Triumphs, or other like occaſions tending to the Honour of the Citie in general, but could not by ſuch Act of Common-Councel tax, or leavy money towards the purchaſing of Lands, or other like occaſions forreign to the government of the Citie. Whereupon it is reſolved by the Houſe of Commons *ſuper totam materiam* that the ſaid Commitment of the ſaid *Nicholas Clegat* was unlawfull, and that a Petition ſhould go from the Houſe to his Majeſty for the inlargement of the ſaid *Nicholas Clegat* his commitment by the Lord Major and Aldermen, being ſince ſtrengthned by ſpecial command.

Henry

Henry TOMPSON one of the Shrieffs, and Robert HENISVVORTH Alderman of the Citie of YORK their ſubmiſſion for their indirect chuſing of Sr. Thomas SAVIL Knight.

I Henry *Tompſon* one of the Shrieffs of the Citie of *York*, do hereby acknowledge to have offended the Lord Major and all the Cominalty of the Citie, by the undue pronouncing and return of Sr. *Thomas Savil* Knight, to be one of the Cittizens to ſerve in this Parliament for the ſaid Citie, whereas I ought of right to have pronounced, and returned in his place Mr. *Thomas Royle*, Alderman of the ſaid Citie, I am hartily ſorry for my ſaid offence and miſdemeanour, and crave pardon of my Lord Major and all the Cominalty, and in particuler of the ſaid Alderman *Hoyl* for the ſame.

I *Robert Heniſworth* Alderman of the Citie of *York*, do acknowledge that I have offended the Lord Major and all the Cominalty of of the ſaid Citie, by my undue preparing and practiſing the election of Sr. *Thomas Savill* Knight, to be choſen one of the Cittizens for the ſaid Cittie of *York* to ſerve in this preſent Parliament, I am hartily ſorry for my ſaid offence, and do deſire my Lord Major and all the ſaid Cominalty to pardon me for the ſame.

Propoſitions drawn for the defence of this Kingdom, and the annoyance of the enemies of the ſame by Sea.

THat every Shire in *England* ſhall be injoyned on the charge of the Countrey, to ſet forth one Ship well maned and victualled for 7. Moneths, and to be of the burthen of 500, 300, or 140. Tuns at the leaſt, according to the ability of the Shire in the opinion of the State.

That every Port, or Sea-Town according to their abillity, be injoyned to do the like. *London* may well furniſh 10. *Briſtol* 3. and the reſt according to their abillity. And ſuch of the Sea-Towns as are not of abillity to ſet forth Ships of the burthen aforeſaid, to furniſh out Pinnaces of 60, or 80, Tuns, for Light-Horſmen, or Intelligencers. Thoſe Ships will amount to 80. Sail and above, and theſe to be divided into 4. Squadrons: adjoyning unto every Squadron one of the *Kings* Ships for their Admiral.

The first Squadron to lye off, and on the Western Ilands, and as high as the *Canaries* for *Brasile* men, the *Caracks* and the Plate-Fleet, and all other trading that way.

The second Squadron to lye of the Southern Cape, and so low as the Groyn, for all such shipping as shall go in or out of *Spain*, or *Portugal*; and if occasion require, to joyn with the former Squadron.

The third Squadron to lye of between the Groyn and the mouth of the Sleve or *Sylly*, to stop such shipping as trade into those Coasts.

The fourth Squadron to keep the Narrow Seas, to awe the *Dunkerkers*, to take all the *French* trade, and so Northward, and this Squadron to be still relieved with fresh Ships, as the other shall grow foul, or come to any misfortune; so as this Squadron may continually keep the Seas most part of the year.

That no Master of these Ships be owner, or have any part in her that he goeth in Master of, for they will be unwilling to bring their Ship in fight or danger, and use many tricks and devices, especially if there be an ignorant Captain. Therefore it is expedient likewise, that every Shire should nominate a Captain for the Ship that they furnish out, for the avoiding of ignorant and insufficient Captains.

That in *London*, *Portsmouth*, or elsewhere, where the State shall think fit, there be Store-houses appointed for the receipt of such Prizes as shall be taken by any of the 4. Squadrons.

That every County or Sea-Town, that furnisheth the said shipping, may nominate and have a Master of their own free election, that may have power in the behalf of the Counties and Sea-Towns, as the other Officers that shall be appointed for the *King*, for the opening of decks of the Prizes, receiving the goods into the said Store-houses, and for the divideing and disposing them according.

That what Prizes any of the 4. Squadrons shall take, be brought into one of the Port-Towns where those Store-houses are appointed, and the benefit of all Prizes, what Squadron soever of the 4. sendeth them in, be divided (the *Kings* part being deducted) to the several Counties and Sea-Towns of the Kingdom, according to the burthen of their shipping, and not particularly to such Counties, or Sea-Towns, unto which the Squadron of Ships belongeth that shall send in the said Prizes.

That it shall not be Lawfull for any in the said Ships, to break, take, or open the deck of any Prizes they take, but nail them down fast, untill they be brought in at one of the Port-Towns aforesaid, and the Officers for the *King* with the Commissioners for the Counties, to take and open them.

That after the *Kings* part is sequestred, with such allowance over and above as shall be proportionable for the *Kings* ships, being Admirals, the rest to be distributed as aforesaid to the use and benefit of all the Counties and Sea-Towns in general, & not in particuler to such Counties and Sea-Towns unto which any of the said 4. Squadrons be-

belongeth that ſendeth in the ſaid Prizes, the Pillage above deck onely excepted, which do belong unto the Officers, Saylors, and Souldiers of the Squadron that took the ſaid Prize.

That for the ſpeedy and preſent execution hereof, every County or Sea-Town that is not furniſhed with ſhipping accordingly ſhall hire untill they can build, which to be limmited to perform within a certain and convenient time.

The charge that will fall on the Subjects yearly, will amount for the firſt year 200000. *l.* which (God proſpering them) within the year they will re-inburſe, and by the benefit of the Prizes afterwards they will have ſtock ſufficient, with increaſe for new victualling forth the Ships the firſt year, and ſo from time to time. The Kingdom will hereby encreaſe their ſhipping, breed, and make good ſtore of good Sea-men, and we ſhall hereby be Maſters of the Sea, ſo as our Merchants ſhall travel ſafely, and we ſhall much prejudice the *French* and *Spaniſh* Nation, or any others that are Enemies, and not in League.

Judge ANDERSON.

Diverſe Perſons fueront Committes a ſeveral temps a ſeveral Perſons ſur pleaſur ſans bon cauſe, parte de queux eſtiant ameſnes en en banck le Roy, *& parte en le Comune banck fueront accordant a le ley de la terre miſe a large & diſcharge de le inpriſonment pur que aſchum grands fueront offendus & procure vn comandment a les Judges que ils ne ferra iſſent apres Ceo nient meins les Judges ne ſurceaſe mes per adviſe enter eux ils feſoient certanie Articles le tenour de queux enſue & deliver eux al ſeignieures Chauncellor & Treaſurer & eux ſubſcribe one touts lour manies, les Articles ſont coe enſuent.*

WE her Majeſties Juſtices of both Benches and Barons of the Exchequer, deſire your Lordſhips that by ſome good means ſome order may be taken, that her Highneſs Subjects may not be committed, or detained in Priſon by commandment of any Noble Man, or Councellor againſt the Laws of the Realm, either help us to have acceſs to her Majeſty to the end to become ſuitors to her for the ſame, for divers have been impriſoned for ſuing ordinary Actions and Statutes at the Common-Law, untill they have been conſtrained to leave the ſame againſt their wills, and put the ſame to order, albeit Judgement and Execution have been had therein to their great loſſes and griefs, for the aid of which Perſons, her Majeſties Writs have ſundry times been directed to divers Perſons, having the cuſtody of ſuch Perſons unlawfully impriſoned, upon which Writs no good, or Lawfull cauſe of impriſonment hath been returned or certified, where-

upon according to the Laws they have been again committed to Priſon in ſecret places, and not to any common ordinary Priſon, or Lawfull Officer, as Shrieff, or other lawfully authorized to have, or keep a Goal, ſo that upon Lawfull complaint made for their delivery, the Queens Courts cannot learn to whom to direct her Majeſties Writs, and by this means Juſtice cannot be done, and moreover, divers Officers and Serjeants of *London* have been many times committed to Priſon for Lawfull executing of her Majeſties Writ, ſued forth of her Majeſties Courts at *Weſt-minſter*, and thereby her Majeſties Subjects and Officers are ſo terrified that they dare not ſue, or execute her Majeſties Laws, her Writs and Commandments. Divers others have been ſent for by Purſevants, and brought to *London* from their dwellings by unlawfull impriſonment, have been conſtrained not onely to withdraw their Lawfull Suits, but have alſo been compelled to pay the Purſevants for bringing ſuch Perſons great ſummes of money. All which upon complaint the Judges are bound by Office and Oath to relieve and help, by and according to her Majeſties Laws. And when it pleaſeth your Lordſhips to will divers of us to ſet down in what caſes a Priſoner ſent to cuſtody by her Majeſty, her Councel, ſome one, or other, or two, are to be detained in Priſon, and not to be delivered by her Majeſties Court or Judges, we thinck, that if any Perſon be committed by her Majeſties Command from her Perſon, or by order from the Councel board, or if any one, or two of her Councel commit one for high Treaſon, ſuch Perſons ſo in the caſes before committed may not be delivered by any of her Courts without due Trial had: Neverthleſs the Judges may Award the Queens Writ to bring the bodies of ſuch Perſons before them, and if upon return thereof, the cauſes of their commitment be certified to the Judges as it ought to be, then the Judges in the caſes before ought not to deliver him, but to remaund the Priſoner to the place from whence he came.

Which cannot conveniently be done, unleſs notice of the cauſe in general, or elſe ſpecial be known to the Keeper, or Goaler that ſhall have the cuſtody of ſuch Priſoner. All the Judges and Barons did ſubſcribe their names to theſe Articles. *Termino Paſcha.* 34. *Eliz.* and ſent one to the Lord *Chancellor*, and another to the Lord Treaſurer, after which time there did follow more quietneſs then before in the cauſe afore mentioned.

The

The KINGS Meſſage the 2. May, 1628. by Secretary COKE.

HIs Majeſty hath commanded me to make known to this Houſe, that howſoever we proceed with the buſineſs we have in hand, which he will not doubt, but to be according to our conſtant profeſſions, and ſo as he may have cauſe to give us thanks, yet his reſolution is, that both his royal care and his harty and true affection towards all his loving Subjects, ſhall appear to the whole Kingdom and to all the World, that he will govern us according to the Laws and Cuſtomes of the Realm, that he will maintain us in the Liberties of our Perſons and propriety of our goods, ſo as we may enjoy as much happineſs as our Forefathers in their beſt times, and that he will rectifie what hath been, or may be amiſs amongſt us: ſo that there may be hereafter no juſt cauſe to complain, wherein as his Majeſty will ranck himſelf amongſt the beſt of our *Kings*, and ſhew he hath no intention to invade, or impeach our Lawfull Liberties or Rights, ſo he will have us to match our ſelves with the beſt Subjects, by not incroaching upon that Soveraignty and Prerogative which God hath put into his hands for our good, and by containing our ſelves within the bounds and Laws of our Forefathers without ſtreining, or inlarging them by new Explanations, Interpretations, Expoſitions, or Additions in any ſort, which he clearly telleth us he will not give way unto. That the weight of the affairs of Chriſtendom do preſs him more and more, and the time is now grown to that point of maturity, that it cannot indure long debate, or delay, ſo as this Seſſion of Parliament muſt continue no longer then Tueſday come ſevenight at the furtheſt, within which time his Majeſty for his part will be ready to perform what he hath promiſed to us, and if we be not as forward to do that is fit for us, it ſhall be our own faults.

Laſtly, upon the aſſurance of our good diſpatch and correſpondency, his Majeſty declareth that his Royal intention is to have another Seſſion at Michalmaſs next, for the perfecting of ſuch things as cannot now be done.

Mr. MASONS ſpeech, 2. May 1628.

I Am of opinion with the Gentleman that ſpake firſt, that in our proceedings in the matter now in debate, we ſhould have uſe of the Title of the Statute, called *circumſpecte agatis*, for it concerns the Liberty of our Perſons, without which we do not enjoy our lives.

The

The Queſtion is:

WHether in this Bill for the explanation of *Magna Charta*, and the reſt of the Satutes, we ſhall provide that the cauſe of the commitment muſt be expreſſed upon the commitment, or upon the Return of the *Habeas Corpus*.

Before I ſpeak to the queſtion it ſelf, I ſhall propoſe ſome obſervations in my conceit, neceſſarily conduceing to the debate of the Matter.

1. That we ought to take care, and to provide for poſterity as our Predeceſſors have done for us, and that this provident care, cannot be expounded to be any diſtruſt of the performance of his Majeſties gracious Declaration, this Act providing for perpetuity, to which his Highneſs promiſe, unleſs it were by Act of Parliament, cannot extend.

2. That we having long debated and ſolemnly reſolved our Rights and Priviledges by virtue of theſe Statutes, and if now we ſhall reduce thoſe Declarations and thoſe reſolutions into an Act, we muſt ever hereafter expect to be confined within the bounds of that Act being made at our Suit, and to be the limmits of the Prerogative in in that reſpect, and it being an Act of explanation, which ſhall receive no further explanation then it ſelf contains.

3. That by this Act we muſt provide a remedy againſt the Perſons which detain us in Priſon, for as to the Commander there can be no certain.

Concerning the Queſtion it ſelf.

IT hath been ſolemnly and clearly reſolved by the Houſe, that the commitment of a Freeman without expreſſing the cauſe at the time of the commitment, is againſt the Law: If by this Act of explanation we ſhall provide onely that the cauſe ought to be expreſſed upon the return of the *Habeas Corpus*, then out of the words of the Statute, it will neceſſarily be inferred, that before the return of the *Habeas Corpus* the cauſe need not to be expreſſed, becauſe the Statute hath appointed the time of the expreſſion of the cauſe, And it will be conſtrued, that if the makers of the Statutes had intended that the cauſe ſhould have been ſoener ſhewen, they would have provided for it by the Act, and then the Act which we term an Act of explanation, will be an Act of the abridging of *Magna Charta*, and the reſt of the Statutes: Or if this Act do not make the commitment without expreſſing the cauſe to be Lawfull, yet it will clearly amount to a tolleration of the commitment, without expreſſing the cauſe untill the *Habeas Corpus*, or to a general, or perpetual diſpenſation beginning with, and continuing as long as the Law it ſelf. And in my underſtanding the words in this intended Law, that no Freeman can be committed without cauſe, can no wayes advantage us, or ſatisfie this Objection, for till the return

of

of the *Habeas Corpus*, he that commits is Judge of the cauſe, or at leaſt hath a licenſe by this Law till that time to conceal the cauſe, and the Goaler is not ſubject to any action for the detaining of the Priſoner upon ſuch command, for if the Priſoner demanded the cauſe of his inpriſonment of the Goaler, It will be a ſafe anſwer for him to ſay that he detains the Priſoner by Warrant, and that it belongs not unto him to deſire thoſe which commit the Priſoner to ſhew the cauſe untill he returns the *Habeas Corpus*, and if the Priſoner be a Suitor to know the cauſe from thoſe that committed him, it will be a ſufficient anſwer for them to ſay they will expreſs the cauſe at the Return of the *Habeas Corpus*. In this cauſe there will be a wrong, becauſe the commitment is without cauſe expreſſed, and one that ſuffers that wrong, *viz.* the party impriſoned, and yet no ſuch wrong doer, but may excuſe if not juſtifie himſelf by this Law.

In making of Laws we muſt conſider the inconveniences which may enſue, and provide for the prevention of them *lex caveat de futuris*. I have taken into my thoughts ſome inconveniences which I ſhall expoſe to your conſiderations, not imagining that they can happen in the time of our gracious Soveraign, but in an Act of Parliament, we muſt provide for the prevention of all inconveniences in future times.

1. If a man be in danger to be impriſoned in the beginning of a long vacation for refuſing to pay ſome ſmall ſumme of money, and knows that by this Act he can have no inlargement till the Return of the *Habeas Corpus* in the Term, and that the charge of his being in Priſon, and of his inlargement by *Habeas Corpus* will amount to more then the ſumme, he will depart with money to prevent his impriſonment, or to redeem himſelf thence, becauſe he cannot ſay any man doth him wrong, untill the Return of the *Habeas Corpus*, & the Law reſolves a man will pay a Fine rather then be impriſoned, for the Judgement which is given when one is fined, is *Ideo Capiatur*, and the higheſt execution for dept is a *Capias ad ſatisfaciendum*, the Law preſuming any man will depart with his money to gain his Liberty, and if the Priſoner procure an *Habeas Corpus*, and be brought into the *Kings-bench* by virtue of it, yet the cauſe need not to be then expreſſed: The proviſion of this Law, being that if no cauſe be then expreſſed he ſhall be bayled, and no cauſe being ſhewen upon the Return of the *Habeas Corpus*, yet may be pretended that at the time of his Commitment, there were ſtrong preſumptions of ſome great offence, But upon examination they are cleared, or it may be ſaid that the offence was of that nature, that the time of his impriſonment before the Return was a ſufficient puniſhment, and we may be frequently impriſoned in this manner, and never underſtand the cauſe, and have often ſuch puniſhment, and have no means to juſtifie our ſelves, and for all theſe proceedings this Law will be the juſtification, or colour.

2. If by this Act there be a Tolleration of impriſonment without ſhewing cauſe untill the Return of the *Habeas Corpus*, yet it is poſſible

to accompany that impriſonment, with ſuch circumſtances of cloſe reſtraint, and others which I forbear to expreſs, as may make an impriſonment for that ſhort time as great a puniſhment, as a perpetual impriſonment in our ordinary manner.

3. The party may be impriſoned a long time before he ſhall come to be delivered by this Law, The place of his impriſonment may be in the furtheſt parts of this Kingdom, The Judges always makes the Return of the *Habeas Corpus* anſwerable to the diſtance of the Priſon from *Weſtminſter*, The Goaler may neglect the Return of the firſt Proceſs, and then the party muſt procure an *alias*, and the Goaler may be then in ſome other imployment for the *King*, and excuſe the not returning of the body upon that Proceſs, and this may make the impriſonment for a year, and in the end no cauſe being returned, the party may be diſcharged, but in the mean time he ſhall have impriſonment, he ſhall never know the cauſe, he ſhall have no remedy for it, nor be able to queſtion any for injuſtice, which have not a juſtification, or excuſe by this Law.

4. The party may be impriſoned during his life, and yet there ſhall be no cauſe ever ſhewn. I will inſtance in the manner, a man may be committed to the furtheſt part of the Kingdom Weſtward, he obtains an *Habeas Corpus*, Before the Goaler receives the *Habeas Corpus* or before he returns it, the Priſoner by Warrant is removed from that Priſon to another, it may be the furtheſt Northern part of the Realm, the firſt Goaler returns the ſpecial Matter which will be ſufficient to free himſelf, and in like manner the Priſoner may be tranſlated from one Priſon to another, and his whole life ſhall be a preregrination, or wayfairing from one Goal to another, and he ſhall never know the cauſe nor be able to complain of any who cannot defend their actions by this Bill.

5. If the Priſoner be brought into the Court by *Habeas Corpus* and no cauſe expreſſed, and thereupon he be enlarged, he may be partly committed again, and then his enlargement ſhall onely make way for his commitment, and this may continue during his life, and he ſhall never know the cauſe, and this not remedied, but rather permitted by this Act.

And there are alſo conſiderable in this Matter, the expence of the party in Priſon: His Fees to the Goaler, his coſts in obtaining and proſecuting an *Habeas Corpus*, and his charges in removing himſelf, attended with ſuch as have the charge of his conduct, and that the Priſoner muſt ſuſtain all without ſatisfaction, or knowing the cauſe.

The onely reaſon given by thoſe of the other opinion. That it is requiſite, the *King* and Councel ſhould have power to command the detainer of a man in Priſon for ſometime without expreſſing the cauſe, is becauſe it is ſuppoſed that the manifeſtation of the cauſe at firſt may prevent the diſcovery of a Treaſon. The reaſon is anſwered by the remedy propoſed, by this Act it being propoſed that it ſhall be provided

vided by this Bill, that upon our commitment we may have inſtantly recourſe to the Chancery for an *Habeas Corpus* retornable in that Court, which is alwayes open, that partly upon the receipt thereof, the Writ muſt be returned and the cauſe thereupon expreſſed. If then this remedy be really the cauſe of commitment, muſt partly appear, which contradicts the former reaſon of State.

And in my own opinion we ought not onely to take care that the Subject ſhould be delivered out of Priſon, but to prevent his impriſonment, The Statute of *Magna Charta*, and the reſt of the Acts providing that no man ſhould be impriſoned, but by the Law of the Land. And although the *King*, or Councel, as it hath been objected, by might may commit us without cauſe, notwithſtanding any Laws we can make. Yet I am ſure without ſuch an Act of Parliament, ſuch commitment can have no Legal colour, and I would be loath we ſhould make a Law to endanger our ſelves, for which reaſons I conceive that there being ſo many wayes to evade from this Act, we ſhall be in worſe caſe by it then without it, providing no remedy to prevent our impriſonment without expreſſing the cauſe to be Lawfull, and adminiſters excuſes for continuing us in Priſon as I have before declared, and thus for providing for one particuler out of reaſon of State, which poſſibly may fall out in an age or two, we ſhall ſpring a leak which may ſinck all our Liberties, and open a gap through which *Magna Charta* and the reſt of the Statutes may iſſue out and vaniſh. I therefore conclude that in my poor underſtanding (which I ſubmit to better Judgements,) I had rather depend upon our former reſolutions, and the *Kings* gracious Declarations then to paſs an Act in ſuch manner as hath been propoſed.

The Speakers ſpeech to his MAJESTY in the Bancketting-Houſe, 5. May 1628.

Moſt gracious and dread Soveraign,

YOur Loyal and dutifull Subjects, the Commons aſſembled in Parliament (by ſeveral Meſſages from your Majeſty, eſpecially by that your muſt Royal Declaration delivered by the Lord *Keeper* before both Houſes) have to their exceeding joy and comfort received many ample expreſſions of your Princely care and tender affection towards them, with a gracious promiſe and aſſurance, that your Majeſty will govern according to the Laws and Statutes of this Realm, and ſo maintain all your Subjects in the juſt freedom of their Perſons, and ſafety of their Eſtates, that all their Rights and Liberties may be by them enjoyed, with as much freedom and ſecurity in your time, as in any age heretofore by their Anceſtors, under the beſt of your Royal Progenitors.

For this ſo great, and gracious a favour, enlarged by a continual in-

timation of your Majeſties confidence in the proceeding of this Houſe, they do by me their Speaker make a full return of moſt humble thanks to your Majeſty, withall dutifull acknowledgement of your grace and goodneſs herein extended to them.

And whereas in one of theſe Meſſages delivered from your Majeſty, there was an expreſſion of your deſire to know whether this Houſe would reſt upon your Royal word and promiſe, aſſuring them, if they would it ſhould be Royally, and really performed.

As they again preſent their humble thanks for this ſeconding, and ſtrengthning of your former Royal expreſſions, ſo in all humbleneſs they aſſure your Majeſty that their greateſt confidence is, and ever muſt be in your gracious favour and goodneſs, without which (they well know) nothing they can frame, or deſire, will be of ſafety and value to them, and therefore are all humble Suitors to your Majeſty, that your Royal heart would graciouſly accept and believe the truth of theirs, which they humbly preſent (and full of truſt and confidence in your Royal word and promiſe) as ever Houſe of Commons repoſed in any of their beſt *Kings*.

True it is, they cannot but remember the publick truſt, for which they are accomptable to preſent and future times, and their deſires are, that your Majeſties goodneſs in fruit and memory, be the bleſſing and joy of poſterity.

They finde alſo that of late there hath been publick violation of your Laws and the Subjects Liberties by ſome of your Majeſties Miniſters, and thence conceive, that no leſs then a publick remedy will raiſe the dejected hearts of your loving Subjects to a cheerfull ſupply of your Majeſty, or make them receive content in the proceeding of this Houſe. From theſe conſiderations they muſt humbly beg your Majeſties leave to lay hold of that gracious offer of yours, which gave them aſſurance, that if they thought fit to ſecure themſelves in their Rights and Liberties, by way of Bill or otherwiſe, ſo it might be provided for, with due reſpect to his Honour and publick good, he would graciouſly be pleaſed to give way unto it.

Far from their intentions it is to incroach upon your Soveraignty, or Prerogative, nor have they the leaſt thought of ſtraining, or inlarging the former Laws in any ſort, by any new interpretations or additions.

The bounds of their deſire extend no further, then to ſome neceſſary explanation of what is truely comprehended within the juſt ſence and meaning of thoſe Laws, with ſome moderate proviſion for execution and performance, as in times paſt upon like occaſions have been uſed.

The way how to accompliſh theſe their humble deſires, is now in ſerious conſideration with them; wherein they humbly aſſure your Majeſty, they will neither looſe time nor ſeek any thing of you Majeſty, but what they hope may be fit for dutifull and Loyal Subjects to ask, and for a gracious and a good *King* to grant.

The

The KINGS Anſwer to the Houſe of Commons delivered by the Lord Keeper, 5. May 1628.

MR. *Speaker*, and the Gentlemen of the Houſe of Commons: his Majeſty hath commanded me to tell you, that he expected an anſwer by your actions, and not delay by diſcourſe.

You acknowledge his truſt and confidence in your proceedings, but his Majeſty ſees not how ye requite him by your confidence of his word and actions, for what need explanations if you doubt not performance of the true meaning? for the explanation will hazard an incroachment upon his Prerogative, and it may well be ſaid, what needs a new Law upon any old, if you repoſe confidence in the Declaration his Majeſty lately made by me to both Houſes, and your ſelves acknowledge that the greateſt truſt and confidence muſt be in his Majeſties grace and goodneſs, without which nothing that you can frame will be of ſafety, or available to you; Yet to ſhew clearly the ſincerity of his Majeſties intentions, he is content that a Bill be drawn for confirmation of *Magna Charta*, and the 6. other Statutes inſiſted on for the Subjects Liberties, if you ſhall chuſe that to be the beſt way, ſo that it be without Additions, Paraphraſe, or Explanations.

Thus if you pleaſe, you may be ſecured from your needleſs fears, and this Parliament may have a happy (wiſhed for) end: whereby the contrary, if you ſeek to tye the *King* by new, and indeed impoſſible bonds, you muſt be accomptable to God and your Countrey for the ill ſucceſs of this meeting.

His Majeſty having given his Royal word, that you ſhall have no cauſe to complain hereafter; leſs then which hath been enough to reconcile great Princes, and therefore ought much more to prevail between *King* and Subject.

Laſtly, I am commanded to tell you, that his Majeſties pleaſure is, that without further replies of Meſſages, or other unneceſſary delayes, you do what you mean to do ſpeedily, remembring the laſt Meſſage which his Majeſty ſent you by Secretary *Coke* for point of time, his Majeſty alwayes intending to perform his promiſe to his people.

The Lord Cokes ſpeech at the conference in the Painted Chamber, preſenting the Petition of Right, 8. May 1628.

I Pray your Lordſhips to excuſe us, for we have been till one of the Clock about the great buſineſs, and (bleſſed be God) we have diſpatcht it in ſome meaſure, and before this time we were not able to attend your Lordſhips, but I hope that this will prove to be a great bleſſing to us. My Lords, I am commanded from the Houſe of Commons to expreſs their ſinguler care and affection they have of concurrence with your Lordſhips in theſe urging affairs and proceedings of this Parliament: both for the good of the Common-wealth, and principally for his Majeſties, And this I may ſay in this particuler, if we have hundreds of tongues, we were not able to expreſs this deſire which we have of that concurrence with your Lordſhips: but I will leave it without any further expreſſion.

My Lords, what neceſſity there is, both in reſpect of your ſelves and your poſterities in the good ſucceſs of this buſineſs, we have acquainted your Lordſhips with the reaſons and the arguments, and alſo that we have had ſome conference about it, we have received from your Lordſhips 5. Propoſitions, and it behoves us to give your Lordſhips ſome reaſons why you have not heard from us before now, for in the mean time as we were conſulting of this weighty buſineſs, we have received divers meſſages from our great Soveraign the *King*, and they conſiſted upon 5. parts. Firſt was, that his Majeſty would maintain all his Subjects in their juſt freedom, both of their Perſons and Eſtates. Secondly, That he will govern according to his Laws and Statutes. Thirdly, That we ſhall finde much confidence in his Royal word, (I pray obſerve that.) Fourthly, That we ſhall enjoy all our Rights and Liberties, with as much Freedom and Liberty as ever any Subjects have before times. Fifthly, That whether we ſhall think it fit, either by way of Bill or otherwiſe, to go on in this great buſineſs, his Majeſty would be pleaſed to give way to it.

Theſe gracious meſſages do ſo work upon our affections that we have taken them into conſideration. My Lords, when we had theſe meſſages, I deal plainly, for ſo I am commanded by the Houſe of Commons: We did conſider in that way we may go for our moſt ſecure way, (nay yours,) we do think that the ſafeſt way was to go a Parliament courſe, for we have a Maxim in the Houſe of Commons, and written on the walls of our Houſe, *that old wayes are the ſafeſt and ſureſt wayes.* And at laſt we fell upon that which we did think (if that your Lordſhips ſhall conſent with us) as the moſt ancient way of all, and that is my Lords *viam fauſtam* both to his Majeſty and your Lordſhips, and to our ſelves, for my Lords, this is the greateſt bond

that

that any Subject can have in Parliament *verbum Regis*, that is an high point of Honour, but this ſhall be done by the Lords and Commons and aſſented to by the *King* in Parliament. This is the greateſt obligation of all, and this is for the *Kings* Honour and our ſafety. And therefore my Lords we have drawn a form of a Petition, deſiring your Lordſhips to concur with us herein, for we come with an unanimous conſent of all the Houſe of Commons, for there is great reaſon your Lordſhips ſhould do ſo becauſe that your Lordſhips be involved in the ſame condition *commune periculum*, and ſo I have done with the firſt part. And now I ſhall be bolde to read that which we have ſo agreed on, I ſhall deſire your Lordſhips that I may read it.

The Petition of Right, to the KINGS moſt Excellent Majeſty,

HUmbly ſheweth unto our Soveraign Lord the *King*, the Lords ſpiritual & temporal, and Commons in this preſent Parliament aſſembled. That whereas it is declared and enacted by a Statute made in the time of the Raign of *King Edw.* 1. commonly called *Statutum de tallagio non concedendo*. That no Tollage, or aid ſhould be laid, or levied by the *King*, or his Heirs in this Realm, without the good will and aſſent of the Arch-Biſhop, Earles, Barons, Knights, Burgeſſes and others, the freemen of the Cominalty of this Realm.

And by Authority of Parliament holden in the 13. year of the Raign of *King Ed.* 3. it is declared and enacted that from thence-forth no Perſons ſhould be compelled to make any loan to the *King* againſt his will, becauſe ſuch loans were againſt reaſon, and the Franchiſes of the Land, And by other Laws of this Realm, it is provided that none ſhould be charged by any charge or impoſition, called a Benevolence nor by ſuch like charge, by which the Statutes before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have inherited this freedom that they ſhould not be compelled to Contribute to any Tax, Tollage, Aid, or other like charge, not ſet by common conſent in Parliament: Yet nevertheleſs of late divers Commiſſions directed to ſundry Commiſſioners in ſeveral Countreys with inſtructions have iſſued, by means whereof your people have been in divers parts aſſembled, and required to lend certain ſummes of money to your Majeſty. And many of them upon refuſal ſo to do, have had an unlawfull Oath adminiſtred unto them not warrantable by the Laws and Statutes of this Realm, and have been conſtrained to become bound to make appearance, and give attendance before your privy Councel and in other places. And others of them have been therefore impriſoned, confined, and ſundry other wayes moleſted and diſquieted, and divers other charges have been laid and levied upon your people in ſeveral Countreys (alleadging ſome ſuperior by Lord Lieutenants,

tenants, Deputy Lieutenants, Commiſſioners for Muſters, Juſtices of Peace, and others by command, or direction againſt the Laws and free Cuſtomes of the Realm from your Majeſtie, or your privy Councel.

And where alſo by the Statute called the great *Charter* of the Liberties of *England*. It is declared and enacted, That no Freeman may be taken nor impriſoned, nor be diſſeiſed of his Freehold, nor Liberties, nor his free Cuſtomes, nor be outlawed, or exiled, or in any manner deſtroyed, but by the Lawfull judgement of his *Peers*, or by the Law of the Land.

And in the 28. year of the Raign of *King Edw.* 3. it was declared and enacted by Authority of Parliament: that no man of what Eſtate, or condition he be, ſhall put out of his Land, or Tenement, nor taken, nor impriſoned, nor diſinherited, nor put to death without being brought to anſwer by due proceſs of Law.

Nevertheleſs, againſt the Tenour of the ſaid Statutes, and other the good Laws, and Statutes of your Realm to that end provided, divers of your Subjects have of late been impriſoned without any cauſe ſhewed, and when for their deliverance they were brought before your Juſtices, by your Majeſties Writ of *Habeas Corpus*, there to undergo and receive as the Court ſhould order, and the Keepers commanded to certefie the cauſes of their detainer, no cauſe was certified, but that they were detained by your Majeſties ſpecial command, ſignified by the Lords of your privy Councel, and yet were returned back to ſeveral Priſons, without being charged with any thing, the which they might make anſwer to, and to Law.

And whereas of late great Companies of Souldiers and Marriners have been diſperſed into divers Countreys of the Realm, and the Inhabitants againſt their wills have been compelled to receive them into their houſes, and there to ſuffer them to ſojourn againſt the Laws and Cuſtomes of this Realm, and to the great grievance and vexation of the people. And whereas alſo by Authority of Parliament in the 25. *E.* 3. it is declared and enacted, that no man ſhall be forejudged of Life, or Limb againſt the form of the great *Charter*, and the Law of the Land, and by the ſaid great *Charter* and other, the Laws and Statutes of this your Realm no man ought to be adjudged to death, but by the Laws eſtabliſhed in this your Realm. Nevertheleſs of late times divers Commiſſions under your Majeſties great Seal have iſſued forth, by which certain Perſons have been aſſigned and appointed Commiſſioners with power and Authority to proceed within the Land, according to the Juſtice of Martial Law againſt ſuch Souldiers, or Marriners, or other diſſolute Perſons joyning with them as ſhould commit any Murther, Robbery, Fellony, Mutiny, or other outrage, or miſdemeanour whatſoever, and by ſuch ſummary courſe and order as is agreeable to Martial Law, and is uſed in Armies in time of War to proceed to the trial and condemnation of ſuch offendors,

ders, and them to cauſe to be executed and put to death according to the Law Martial. By pretext whereof ſome of your Majeſties Subjects have been by ſome of the ſaid Commiſſioners put to death, when and where, if by the Laws and Statutes of the Land they had deſerved death, by the ſame Laws and Statutes alſo they might, and by none other ought to have been adjudged and executed. And alſo ſundry grievous offenders by colour thereof claiming an exemption, have eſcaped the puniſhment due to them by the Laws and Statutes of this your Realm: By reaſon whereof divers of your Officers and Miniſters of Juſtice have unjuſtly refuſed, or forbore to proceed againſt ſuch offenders according to the ſame Laws and Statutes, upon pretence that the ſaid offenders were puniſhable onely by Martial Law, and by Authority of ſuch Commiſſions as aforeſaid, which Commiſſions and all other of like nature are directly contrary to the ſaid Laws and Statutes of this your Realm.

They do therefore humbly pray your moſt Excellent Majeſty, that no man hereafter be compelled to make, or yield any Guift, Loan, Benevolence, Tax, or ſuch like charge, without common conſent by Act of Parliament. And that none be called to make anſwer, or to take ſuch an Oath, or to give attendance, or to be confined, or otherwiſe moleſted, or diſquieted concerning the ſame, or for refuſal thereof. And that no Freeman may man in ſuch manner as is before mentioned be impriſoned, or detained. And that your Majeſty would be pleaſed to remove the ſaid Souldiers and Marriners, and that your people may not be ſo burthened in time to come: And that the aforeſaid Commiſſions for proceeding by Martial Law may be revoked & annulled, and that hereafter no Commiſſions of like nature may iſſue forth to any Perſon, or Perſons whatſoever, to be executed as aforeſaid, leaſt by colour of them any your Majeſties Subjects be deſtroyed and put to death, contrarie to the Laws and Franchiſes of the Land.

All which they moſt humbly pray of your moſt Excellent Majeſtie as their Rights, and Liberties according to the Laws and Statutes of this Realm. And that your Majeſtie would alſo vouchſafe to declare, that the Awards, doings and proceedings to the prejudice of your people in any the premiſes, ſhall not be drawn hereafter into conſequence, or example. And that your Majeſtie would be pleaſed gratiouſly for the further comfort and ſafety of your people to declare your Royal will and pleaſure, that in the things aforeſaid, all your Officers and Miniſters ſhall ſerve you according to the Laws and Statutes of this Realm, as they tender the Honour of your Majeſtie, and the proſperity of this Kingdom.

Sr. Benjamin Ruddierds Speech.

Mr. *Pym*

I Did not think to have ſpoken again to this Bill, becauſe I was willing to believe that the forwardneſs of this Committee would have prevented me, but now I hold my ſelf bound to ſpeak, and to ſpeak in earneſt. In the firſt year of the *King*, and the ſecond convention I firſt moved for the increaſe and inlarging of poor Miniſters livings, I ſhewed how neceſſarie it was that it had been neglected, this was alſo commended to the Houſe by his Majeſtie, there were as (now) many accuſations on foot againſt ſcandalous Miniſters, I was bolde to tell the Houſe that there were ſcandalous livings, which were much the cauſe of the other livings of 5. *Marks*, of 5 *l.* a year, that men of worth and of parts would not be muſled up to ſuch pittances, that there were ſome places in *England* which were ſcarce in Chriſtendom, where God was little better known then amongſt the *Indians*. I exampled it in the utmoſt skirts of the North, where the prayers of the common people are more like Spells and Charms then devotions, the ſame blindeneſs and ignorance is in divers parts of *Wales*, which many of that Countrey doth both know and lament.

I declared alſo, that to plant good Miniſters was the ſtrongeſt and ſureſt means to eſtabliſh true Religion, that it would prevail more againſt Papiſtry, then the making of new Laws, or executing of old, that it would counterwork Court, Conivence, and Luke-warm accommodation, that though the calling of Miniſters be never ſo glorious within, the outward poverty will bring contempt upon them, eſpecially amongſt thoſe, who meaſure men by the ounce, and weigh them by the pound, which indeed is the greateſt part of men.

Mr. *Pym*, I cannot but teſtifie how being in *Germany* I was exceedingly ſcandalized to ſee the poor ſtipendarie Miniſters of the Reformed Churches there diſpiſed and neglected, by reaſon of their poverty, being otherwayes very grave and learned men. I am afraid this is a part of the burthen of *Germany*, which ought to be a warning to us.

I have heard many Objections and difficulties, even to impoſſibilities againſt this Bill, to him that is unwilling to go, there is even a Bear, or Lion in the way. Firſt let us make our ſelves willing, then will the way be eaſie and ſafe enough.

I have obſerved that we are alwayes very eager and fierce againſt Papiſtry, againſt ſcandalous Miniſters, and againſt things which are not ſo much in our power. I ſhould be glad to ſee that we did delight as well in rewarding as in puniſhing, and in undertaking matters within our own reach, as this is abſolutely within our power: Our own duties are next us, other mens further of. I do not ſpeak this, that I do miſlike

miſlike the deſtroying, or pulling down of that which is ill, but then, let us be as earneſt to plant and build up that which is good in the room of it; for why ſhould we be deſolate? The beſt and the greateſt way to diſpell darkneſs and the deeds thereof is to let in light, we ſay that day breaks, but no man can ever hear the noiſe of it, God comes in the ſtill voice, let us quickly mend our Candleſticks, and we cannot want lights.

I am afraid this backwardneſs of ours will give the adverſary occaſion to ſay, that we chuſe our Religion, becauſe it is the cheaper of the two, that we would willingly ſerve God with ſomewhat that coſt us naught. Believe it Mr. *Pym*, he that thinks to ſave any thing by his Religion but his Soul, will be a terrible looſer in the end, we ſow ſo ſparingly, and that is the reaſon we reap ſo ſparingly, and have no more fruit. Me thinks whoſoever hates Papiſtry, ſhould by the ſame rule hate covetouſneſs, for that's Idolatry too, I never liked hot profeſſions and cold actions, ſuch a heat is rather the heat of a diſtemper and diſeaſe then of life and ſaving health.

For ſcandalous Miniſters, there is no man ſhall be more foreward to have them ſincerely punniſhed then I will be, when Salt hath loſt its ſavour, fit it is to be caſt on the unſavory place the dunghill. But Sr. let us deal with them as God hath dealt with us: God before he made man, he made the World, a handſome place for him to dwell in, ſo let us provide them convenient livings, and then puniſh them on Gods name, but till then, ſcandalous livings cannot but have ſcandalous Miniſters. It ſhall ever be a rule to me, that where the Church and Common-wealth are both of one Religion, it is comely and decent that the outward ſplendor of the Church ſhould hold a proportion, and participate with the proſperity of the temporal State, for why ſhould we dwell in houſes of Cedar and ſuffer God to dwell in Tin? It was a Glorious and Religious work of *King James*, and I ſpeak it to his unſpeakable Honour, and to the praiſe of that Nation, who (though that Countrey be not ſo rich as ours, yet are they Richer in their affections to Religion,) within the ſpace of one year, he cauſed to be planted Churches through all *Scotland*, the *Highlands* and the *Boarders*, worth 30.*l.* a year a piece, with a houſe and ſome gleab belonging to them, which 30.*l.* a year conſidering the cheapneſs of the Countrey, and the modeſt faſhion of Miniſters living there, is worth double as much as any where within a 100. miles of *London*, the printed Act and Commiſſion whereby it may be executed, I have here in my hand delivered unto me by a Noble Gentleman of that Nation, and a worthy Member of this Houſe Sir *Francis Stuart*.

To conclude, although Chriſtianity and Religion be eſtabliſhed generally throughout this Kingdom, yet untill it be planted more particularly I ſhall ſcarce think this a Chriſtian Common-wealth, ſeeing it hath been moved and ſtirred in Parliament, it will lye hea-

vy upon Parliaments, untill it be effected. Let us do ſomething for God here of our own, and no doubt God will bleſs our proceedings in this place the better for ever hereafter. And for my own part I will never give over ſolliciting this cauſe as long as Parliaments and I ſhall live together.

CHARLES REX.
To our truſty and well-beloved the Lords Spiritual and Temporal of the Higher Houſe of PARLIAMENT.

WE being deſirous of nothing more then the advancement of the good peace, and proſperity of our people, have given leave to free debates of higheſt points of our Prerogative Royal, which in times of our Predeceſſors, Kings and Queens of this Realm were ever reſtrained as Matters they would not have diſputed, and in other things we have been willing fairly to condiſcend to the deſires of our loving Subjects as might fully ſatisfie all moderate mindes, and free them from all juſt fears and jealouſies, with thoſe Meſſages which heretofore we have ſent to the Commons Houſe, will well demonſtrate to the World, and yet we finde it ſtill inſiſted on, that in no caſe whatſoever, ſhould it never ſo nearly concern Matters of State and government, we nor our privy Councel have power to commit any man without the cauſe ſhewed, whereas it often happens that ſhould the cauſe be ſhewed the ſervice thereby would be deſtroyed and defeated, and the cauſe alleadged muſt be ſuch as may be determined by our Judges of our Courts at *Weſtminſter* in a Legal and Ordinary way of Juſtice, whereas the cauſe may be ſuch whereof the Judges have no capacity of Judicature, or rules of Law to direct, or guide their Judgements in caſes of that tranſcendent nature, which hapning ſo often, the very intermitting of the conſtant rules of government (for many ages within this Kingdom practiſed) would ſoon diſſolve the very frame and foundation of our Monarchy; wherefore as to our Commons we have made propoſitions which might equally preſerve the juſt Liberty of the Subject. So my Lords, we have thought good to let you know that without overthrow of our Soveraignty we cannot ſuffer this power to be impeached. But notwithſtanding to clear our conſcience, and juſt intentions this we publiſh, that it is not in our hearts, nor ever will we extend our royal power lent unto us from God beyond the juſt rule of moderation in any thing which ſhall be contrary to our Laws and Cuſtomes, where the ſafety of our people ſhall be our onely aim. And we do hereby declare our royal pleaſure, and reſolution to be (which God willing we ſhall ever conſtantly continue and maintain) that neither we nor our privy Councel, ſhall

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or will at any time hereafter commit, or command to Priſon, or otherwiſe reſtrain the Perſon of any for not lending money unto us, or for any other cauſe, which in our conſcience doth not concern the State, the publick good and ſafety of us and of our people, we will not be drawn to pretend any cauſe which in our Judgements is not, or is not expreſſed; which baſe thought we hope no man will imagine can fall into our royal breaſt, that in all caſes of this nature which ſhall hereafter happen, we ſhall upon the humble Petition of the party, or acceſs of our Judges to us readily and really expreſs the cauſe of their commitment, or reſtraint, ſo ſoon as with conveniency and ſafety the ſame is fit to be diſcloſed and expreſſed. That in all cauſes Criminal of ordinary Juriſdiction our Judges ſhall proceed to the deliverance and baylment of the Priſoner, according to the known and ordinary rules of the Laws of this Land, and according to the Statutes of *Magna Charta*, and thoſe other ſix Statutes inſiſted upon, which we do take knowledge ſtand in force, and which we intend not to abrogate againſt the true intention thereof.

Thus we have thought fit to ſignifie unto you, the rather for ſhortning any long delayes of this queſtion, the ſeaſon of the year ſo far advanced, and our great occaſions of State not lending us many dayes for long continuance of this Seſſion of Parliament.

Given under our Signet at our Pallace *of* Weſtminſter, *the* 12. *of* May, *in the fourth year of our Raign.*

The KINGS Meſſage by the Lord Keeper, 21. May 1628.

HIs Majeſtie commanded me to ſignifie to your Lordſhips, that the buſineſs concerning your part preſented by the Commons to the Lords concerning the Liberty of the Subject, wholly depends upon your Lordſhips, and becauſe his affairs are preſſing, and that he is very ſuddenly to take a Journey to *Portſmouth*. As alſo becauſe his Majeſty would have the buſineſs put in a good forwardneſs before his going thither, his Majeſtie deſires your Lordſhips this day to proceed to a reſolution, whether you will joyn with the Houſe of Commons in the Petition or not.

Mr. Masons ſpeech, concerning the Addition propounded by the Lords, to be added to the Petition of Right.

IN our Petition of Right to the *Kings* Majeſtie we mentioned the Laws and Statutes, by which it appeared, that no Tax, Loan, or the like ought to be levied by the *King*, but by common aſſent in Parliament. That no Freeman ought to be impriſoned but by the Law of the Land. That no Freeman ought to be compelled to ſuffer Souldiers in his houſe. In the Petition we have expreſſed the breach of theſe Laws, and deſire that we may not ſuffer the like, all which we pray as our Rights and Liberties. The Lords have propoſed an addition to this Petition in theſe words (We humbly preſent this Petition to your Majeſtie, not onely with a care of our own Liberties, but with a due regard to leave intyre that Soveraign power wherewith your Majeſty is intruſted for the protection, ſafety, and happineſs of your people) and whether we ſhall conſent unto this addition is the Subject of this dayes diſcourſe. And becauſe my Lord *Keeper* at the laſt conference declared their Lordſhips had taken the words of the Petition apart. The word (leave) in a Petition is of the ſame nature, as (ſaving) in a grant, or Act of Parliament, when a Man grants but part of a thing, he ſaves the reſt, when he Petitions to be reſtored but to part, he leaveth the reſt, then in the end of our Petition the word (leave) will imply that ſomething is to be left of that, or at leaſt with a Reverence to what we deſire.

The word (entyre) is very conſiderable, a Conquerour is bound by no Law but hath power *dare leges*, his will is a Law, and although *William* the Conquerour at firſt to make his way to the Crown of *England* the more eaſie, and the poſſeſſion of it the more ſure, claiming it by little, but afterwards when there were no powerfull pretenders to the Crown. The little of Conqueſt to introduce that abſolute power of a Conquerour was claimed, and that Statute of *Magna Charta*, and other Statutes mentioned in our Petition do principally limmit that power I hope it is as Lawfull for me to cite a Jeſuite as it is for Dr. *Manwaring* to falſifie him, *Suares*, in his firſt book *de legibus*, cap. 17. delivered his opinion in theſe words *amplitudo & reſtrictio poteſtatis Regum circa ea quæ per ſe mala vel injuſta non ſunt, pendet ex arbitrio hominum & ex ambigua convencione vel pacto inter Reges & Regnum.* And the further expreſſeth his opinion that the *King* of *Spain* was ſo abſolute a Monarch, that he might Lawfully impoſe tribute without conſent of his people, untill about 200. years ſince, when it was concluded betwe en him and his people, that without conſent of his people by proxies he ſhould not impoſe any Tribute. And *Suares*

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opinion is, that by that agreement the *Kings* of *Spain* are bound to impoſe no Tribute without conſent.

And this agreement that Author calls a reſtraining of that Soveraign power, the Statutes then mentioned in our Petition reſtraining that abſolute power of a Conquerour, if we recite thoſe Statutes, and ſay we have the Soveraign power intire, we do not take away that reſtraint which is the virtue and ſtrength of thoſe Statutes, and ſet at Liberty the claim of the Soveraign power of a Conquerour, which is to be limitted and reſtrained by no Laws, this may be the danger of the word (*entyre.*)

The next words delivered by the Lords as obſervable is the particle (*that*) becauſe it was ſaid that all Soveraign power is not mentioned to be left, but onely (*that*) with which the *King* is truſted for our protection, ſafety, and happineſs: But I conceive this to be an exception of all Soveraign power, for all Soveraign power in a *King* is for the protection, ſafety, and happineſs of his people: If all Soveraign power be excepted, you may eaſily Judge the conſequence, all Loans and Taxes being impoſed by colour of that Soveraign power.

The next word is (*truſted*) which is very ambiguous, whether it be meant truſted by God onely as a Conquerour, or by the people alſo as *King*, which are to Govern alſo according to Laws *ex pacto*. In this point I will not preſume to adventure further, onely I like it not by reaſon of the doubtfull expoſition it admits. I have likewiſe conſidered the propoſition it ſelf, and therein I have fallen upon the *dilemma* that this addition ſhall be conſtrued, either to refer unto the Petition or not: If it doth refer unto the Petition, it is meerly uſeleſs and unneceſſary, and unbefitting the Judgement of this grave and great Aſſembly to add to a Petition of this weight; If it hath reference unto it, then it deſtroys not onely the virtue and ſtrength of our *Petition of Right*, but our rights themſelves, for the addition being referred to each part of the Petition, will neceſſarily receive this conſtruction.

That none ought to be compelled to make any guift, loan, or ſuch like charge without common conſent, or Act of Parliament, unleſs it be by the Soveraign power with which the *King* is truſted for the protection, ſafety, and happineſs of his people.

That none ought to be compelled to ſojourn, or billet Souldiers, unleſs by the ſame Soveraign power, and ſo of the reſt of the Rights contained in the Petition. And then the moſt favourable conſtruction will be that the *King* hath an ordinary Prerogative, and by that he cannot impoſe Taxes or Impriſon. That is, he cannot impoſe Taxes at his will to imploy them as he pleaſeth, & that he hath an extraordinary and tranſcendent Soveraign power for the protection and happineſs of his people, and for ſuch purpoſe, he may impoſe Taxes, or billet Souldiers as he pleaſeth, and we may aſſure our ſelves that hereafter all Loans, Taxes, and billeting of Souldiers will be ſaid to be for the protection, ſafety, and happineſs of the people. Certainly hereafter it

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will be conceived that an Houſe of Parliament would not have made an unneceſſary addition to this *Petition of Right*, and therefore it will be reſolved that the addition hath relation to the Petition, which will have ſuch operation as I have formerly declared, and I the rather fear it, becauſe the late Loan and Billeting have been declared to have been by Soveraign power for the good of our ſelves, and if it be doubtfull whether this propoſition hath reverence to the Petition or not, I know not who ſhall Judge whether Loans, or Impriſonments hereafter be by that Soveraign power or not.

A Parliament which is made a body of ſeveral wits, and may be diſſolved by one Commiſſion cannot be certain to decide this queſtion. We cannot reſolve that, that the Judges ſhall determine the words of the *Kings* Letter read in this Houſe, expreſſing the cauſe of Commitment, may be ſuch, that the Judges have not capacity of Judicature, no rules of Law to direct & guide their Judgements in caſes of that tranſcendent nature, the Judges then and the Judgements are eaſily conjectured. It hath been confeſſed by the *Kings* Councel, that the Statute of *Magna Charta* bindes the *King*, and his Soveraign power cannot be divided from himſelf. If then the Statute of *Magna Charta* bindes the *King*, it bindes his Soveraign power; if to the Petition theſe words be added, the expoſition then muſt be, that the Statute of *Magna Charta* binds the *Kings* Soveraign power. Saving the *Kings* Soveraign power, I ſhall endevour to give ſome anſwer to the reaſons given by the Lords.

The firſt is, that it is the intention of both Houſes to maintain the juſt Liberty of the Subject, and not to diminiſh the juſt power of the *King*, and therefore the expreſſion of that intention in this Petition cannot prejudice us; which I anſwer,

Firſt that our intention was, and is as we then profeſſed, and no man can aſſign any particuler in which we have done to the contrary. Neither have we any way tranſgreſſed in that kinde in this Petition, and if we make this addition to the Petition, it would give ſome intimation, that we have given cauſe or colour of offence therein which we deny, and which if any man conceive ſo, that he would aſſign the particuler, that we may give an anſwer thereunto.

By our Petition we onely deſire our particuler Rights and Liberties to be confirmed to us, and therefore it is not proper for us in it to mention Soveraign power in general, being altogether impertinent to the matter in the Petition.

There is a great difference between the words of the addition, and the words propoſed therein, for reaſon, *viz.* between juſt power which may be conceived to be limmitted by Laws, and Soveraign power, which is ſuppoſed to be tranſcendent and boundleſs.

The ſecond reaſon delivered by their Lordſhips was that the *King* is Soveraign. That as he is Soveraign he hath power, and that that Soveraign power is to left, for my part I would leave it, ſo as not to mention it, but if it ſhould be expreſſed to be left in this Petition as it

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is propoſed, it muſt admit ſomething to be left in the *King* of what we pray, or at leaſt admit ſome Soveraign power in his Majeſtie in theſe Priviledges, which we claim to be our Right which would fruſtrate our Petition and deſtroy our Right, as I have formerly ſhewed.

The third reaſon given from this addition was that in the ſtatute *Articuli ſuper Chartas*, there is a ſaving of the right and ſeigniory of the Crown.

To which I give theſe anſwers: That *Magna Charta* was confirmed above 30 times, and a general *ſaving* was in none of theſe *Acts* of confirmation but in this onely, and I ſee no cauſe we ſhould follow one ill, and not 30 good Preſidents, and the rather becauſe that *ſaving* produced ill effects that are well known.

That *ſaving* was by Acts of Parliament: The concluſion of which Act, is, that in all thoſe Caſes the *King* did will, and all thoſe that were at the making of that Ordinance, did intend that the Right and Seigniory of the Crown ſhould be ſaved: By which it appears that the *ſaving* was not in the Petition of the Commons, but added by the *King*, for in the Petition the *Kings* will is not expreſſed.

In that Act the *King* did grant and depart with to his people divers Rights belonging to his prerogative, as in the firſt Chapter he granted that the people might chooſe three Men which might have power to hear and determine complaints made againſt thoſe that offended in any point of *Magna Charta*, though they were the *Kings* officers, and to fine and ranſome them, and in the 8. 12. and 19. Chapter of that Statute the *King* departed with other prerogatives, and therefore there might be ſome reaſon of the adding of that Soveraign by the *Kings* Councel: But in this Petition we deſire nothing of the *Kings* Prerogative, but pray the enjoying of our propper and undoubted Rights and Priviledges, and therefore there is no cauſe to add any words which may imply a *ſaving* of that which concerns not the matter in the Petition.

The 4. reaſon given by their Lordſhips was, that by the mouth of our *Speaker*, we have this Parliament declared that it was far from our intention to incroach upon his Majeſties Prerogative, and that therefore it could not prejudice us to mention the ſame reſolution in an addition to this Petition.

To which I anſwer that that declaration was a general anſwer to a Meſſage from his Majeſtie to us, by which his Majeſtie expreſſed that he would not have his Prerogative ſtreitned by any new explanation of *Magna Charta*, or the reſt of the Statutes, and therefore that expreſſion of our *Speakers* was then propper to make it have reference to this Petition; there being nothing therein conteined, but particuler Rights of the Subject, and nothing at all concerning his Majeſties Prerogative.

Secondly that anſwer was to give his Majeſtie ſatisfaction of all our proceedings in general, and no man can aſſign any particuler in

which we have broken it, and this Petition juſtifies it ſelf, that in it we have not offended againſt the proteſtation, and I know no reaſon but that this declaration ſhould be added to all our Laws we ſhall agree on this Parliament, as well as to this Petition.

The laſt reaſon given, was, that we have varied in our Petition from the words of *Magna Charta*, and therefore it was well neceſſary that a *ſaving* ſhould be added to the Petition.

I anſwer that in the Statute 5. *E.* 3. 25. *E.*3. 28. *E.*3. and other Statutes, with which *Magna Charta* is confirmed, the words of the Statute of explanation differ from the words of *Magna Charta* it ſelf, the words of ſome of the Statutes of explanation being, that no man ought to be apprehended, unleſs by indictment, or due proceſs of Law,& the other ſtatutes differing from the words of *Magna Charta* in many other particulars, and yet there is no (ſaving) in thoſe Statutes, much leſs ſhould there be any in a Petition of Right, theſe are the anſwers I have conceived to the reaſons of their Lordſhips, and the expoſition I apprehend muſt be made of the propoſed words, being added to our Petition. And therefore I conclude that in my opinion we may not conſent to this addition, which I ſubmit to better Judgements.

The Reaſons of the Commons Houſe delivered by Mr. Glanuile, why they cannot admit of the Propoſitions tendered unto them by the Lords.

May it pleaſe your Lordſhips,

I Am commanded by the Houſe of Commons to deliver unto your Lordſhips their reaſons, why they cannot admit of the Propoſition tendered unto them by you: but for an introduction into the buſines, pleaſe you to remember that a Petition of Right was ſhewed to your Lordſhips, wherein we deſired you would joyn with us, a Petition my Lords fitting for theſe times, grounded upon Law, and ſeeking no more then the Subjects juſt Liberty.

The Petition conſiſted of 4. parts. The firſt touching Loan, Aids, and Taxes. The ſecond touching impriſonment of mens Perſons. The third touching Billeting of Souldiers. The fourth touching Commiſſions iſſued for Martial Law, and put in execution upon ſeveral Perſons. Groaning under the burthen of theſe, we deſired remedy, and wiſh your Lordſhips would joyn with us, which you having taken into conſideration, we muſt confeſs, have dealt nobly and freely with us, not to conclude any thing till you hear our juſt reaſons, for which we thank your Lordſhips, and hope your Lordſhips will value thoſe reaſons which we ſhall now offer unto your Lordſhips.

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The work of this day will make a happy iſſue, if your Lordſhips pleaſe to relinquiſh this, as we formerly upon conference with your Lordſhips have done ſome other things. For the Propoſition my Lords we have debated it throughly in our Houſe, and I am commanded to deliver unto you the reaſons why we cannot inſert this clauſe, Neither your Lordſhips, nor we deſire to debate Liberty beyond the due bounds, or to incroach upon the *Kings* Prerogative and leſſen the bounds thereof. The firſt reaſon I am to lay down, is, touching Soveraign power, which I beſeech you not to accept as my own, being but a weak Member of that ſtrong body, but as the reaſons of the whole Houſe upon great and grave conſiderations.

Firſt my Lords, the words Soveraign power hath either reference, or no reference to the Petition, if no reference then ſuperfluous, if a reference then dangerous and operative upon the Petition, and we think your Lordſhips purpoſes is not to offer unto us any thing that may be vain, or to the hinderance of any thing wherein you have already joyned with us. The Petition declareth the Right of the Subject, which yet may be broken by the word Soveraign power, and ſo the virtue of the Petition taken away. The end of the Petition is not to enlarge the bounds of Law, but their Liberties being infringed, to reduce them to their ancient bounds, and ſhall we by admitting of theſe words Soveraign power, inſtead of cureing the wound, launch it and cut it deeper? The next point is, the word (*truſt*) a word of large latitude, and deep ſence, we know that there is a truſt in the Crown and *King*, but regulated by Law, we acknowledge in penal Statutes the *King* may grant another power to diſpenſe with the Law, but *Magna Charta* inflicting no penalty leaveth no truſt, but claimeth his own right, therefore the word (*truſt*) would confound this diſtinction.

Our next reaſon is, we think it abſolutely repugnant to any courſe of Parliament to put (*ſaving*) to the Petition. In former times the courſe of petitioning the *King* was this: The Lords and the *Speaker* either by words, or writing preferred their Petition to the *King*, this then was called the Bill of the Commons, which being received by the *King*, part he received and part he put out, part he ratified, for as it came from him it was drawn into a Law, But this courſe in 2. *H.* 5. was found prejudicial to the Subject, and ſince in no ſuch caſes they have petitioned by Petition of Right, as we now do, who come to declare what we demaund of the *King*: For if we ſhould tell him what we ſhould not demaund, we ſhould then proceed not in a Parliamentary courſe. Now for that which is alleadged by your Lordſhips *de articulis ſup. Chartas*, that my Lords is not like this, that is (*ſaving*) upon particulars; But this Petition conſiſting on particulers, would be deſtroyed by a general ſaving, The ſaving *de articulis ſup. Chartas* are of three aids, for Ranſomming the *Kings* Perſon, for Knighting the *Kings* eldeſt Son, and once for Marrying the *Kings* eldeſt Daughter: Theſe by the form of the Petition, ſhew that

they came not in upon the *Kings* anſwer, but upon the Petition. Firſt then followed the *(ſavings)* which under favour, we think are no reaſons to make us accept of this (*ſaving*) being not pertinent to the Petition.

Theſe 23. Statutes 34. *E.*1. were made to confirm *Magna Charta*, ſo that there are in all 30. Acts to ſet *Magna Charta* in its purity, and if ſome ſubſequent Statute have laid ſome blemiſh upon it, ſhall we now then make the ſubject in worſe caſe, by laying more weight upon it (God forbid.) In the next place your Lordſhips reaſon thus, that this which you wiſh we would admit of, is no more then what we formerly did profeſs, when we ſent the *King* word, we had no purpoſe at all to trench upon his prerogatives. It is true my Lords we did ſo, but this was not annexed to any Petition, for in that manner we ſhould never have done it. And here I am commanded (with your favours) to deliver unto you what a Learned Member of the Houſe delivered unto our Houſe touching this point. The *King* (ſaith he) and the Subject hath two liberties. Two Mannors, joyning one upon another; the *King* is informed the Subject hath intruded upon him, but upon triall it appeareth not to be ſo, were it fitting, think you that the Subject ſhould give ſecurity that he ſhould not incroach or intrude on that Mannor of his becauſe the *King* had been informed he did ſo? I think you will be of another minde, wherefore I am commanded ſeeing we cannot admit of this addition, to deſire your Lordſhips to joyn with us in the Petition, which being granted and the hearts of the *King* and people knit togeather, I doubt not but his Majeſtie will be ſafe at home, and feared abroad.

Sir HENRY MARTINS Speech.

MY Lords; the work of this day wherein the Houſe of Commons hath implyed the Gentleman that ſpake laſt, and my ſelf was to reply to the anſwer, which it hath pleaſed the Lord *Keeper* to make to thoſe reaſons, which we had offered to your *Lord*ſhips conſideration, in juſtification of our refuſall, not to admit into our Petition the addition commended by your *Lord*ſhips, which reaſons of ours ſince they have not given ſuch ſatisfaction as we deſired, and well hoped, as by the *Lord Keepers* anſwer appeared. It was thought fit for our better order and method in replying, to divide the *Lord Keepers* anſwer into two parts, a Leagall, and a Rationall: The reply to the leagall your Lordſhips have heard, my ſelf comes intruſted to reply to the rational, which alſo conſiſted of two branches, the firſt deduced from the whole context of the additional clauſe, the ſecond inforced out of ſome part.

In the firſt were theſe reaſons, that the ſame deſerved our acceptance. Firſt as ſatisfactory to the *King*, Secondly to your Lordſhips, Thirdly

Thirdly, agreeable to what our ſelves had often proteſted, and profeſſed expreſly by the mouth of our Speaker.

I muſt confeſs theſe motives were weighty and of great force, and therefore to avoid miſunderſtanding, and miſconceit, which otherwiſe might be taken againſt the Houſe of Commons upon refuſall of the propounded addition, It is neceſſary to State the queſtion rightly, and to ſet down the true difference between your Lordſhips and us: Now indeed there is no difference or queſtion between your Lordſhips and us, concerning this additional clauſe in the nature and quality of a propoſition: For ſo conſidered we ſay it is moſt true, and to be received and imbraced by us; *In toto & qualibet parte & qualibet ſyllaba*, yea and were that the queſtion we ſhould add to this addition, and inſtead of (*due regard*) ſay, we have had, have and ever will have a ſpecial and ſingular regard: where to leave entire Sovereign power, were to intimate as if we had firſt cropt it and then left it, but our regard was to acknowledge and confeſs it ſincerely and to maintain it conſtantly, even to the hazard of our goods and lives if need be.

To which purpoſe your Lordſhips may be pleaſed to remember that ſtrict oath every *Member* of our Houſe hath taken this very ſeſſion in theſe words I (A. B.) *do utterly teſtifie and declare in my Conſcience that the Kings highneſs is the Supreme or Sovereign Governour of this Realm in all Cauſes* &c. *and to my utmoſt power will aſſiſt and defend all Juriſdictions, Priviledges Preheminencies and Authorities granted or belonging to the Kings Highneſs or united or annexed to the Imperial Crown of this Realm*, &c.

So that your Lordſhips need not to borrow from our proteſtations any exhortations to us, to entertain a writing in aſſiſtance of the *Kings* Sovereign power, ſince we ſtand obliged by the moſt Sacred bond of a ſolemn Oath, to aſſiſt and defend the ſame if cauſe or occaſion ſo required; So that the onely queſtion between your Lordſhips and us is, whether this clauſe ſhould be added to our Petition and received into it as part thereof? which to do your Lordſhips reaſons have not perſwaded us, becauſe ſo to admit it, were to overthrow the fabrick and ſubſtance of our *Petition of Right* and to annihilate the Right pretended by us, and the Petition it ſelf in effect. For theſe words being added to our Petition (*viz*) we humbly preſent this Petition *&c.* with due regard to leave intire your Sovereign power *&c.* do include manifeſtly an exception to our Petition, and an exception being of the nature of the thing whereunto it is an exception, *Exceptio eſt de regula*, muſt of neceſſity deſtroy the rule or Petition ſo far as to the Caſe excepted; *Exceptio firmat regulam in Caſibus non exceptis, in Caſibus exceptis diſtruit Regulam.* Then this conſtruction followeth upon our Petition thus inlarged, that after we have Petitioned, That no Freeman ſhould be compelled by impriſonment to lend or contribute money to his Majeſtie without

his aſſent in Parliament, nor receive againſt his will Souldiers into his houſe, or undergo a commiſſion of Martiall Law for life or *Member* in time of peace: We ſhould add, except his Majeſtie be pleaſed to require our monies and impriſon us for not lending, and ſend Souldiers into our houſes, and execute us by Martiall Law in time of peace by virtue of his Soveraign power.

Which conſtruction as it followeth neceſſarily upon this inlargment, ſo it concludeth againſt our Right in the premiſſes, and utterly fruſtrateth all our Petition, neither may it ſeem ſtrange if this clauſe additionall (which of it ſelf in quallity of a propoſition we confeſs) being added to our Petition (which alſo is true) ſhould overthrow the very frame and fabrick of it, ſeeing the *Logicians* take knowledge of ſuch a Fallacy called by them, *Fallacia à bene diviſis ad male conjuncta*. *Horace* the Poet giveth an inſtance to this purpoſe in a painter, who, when he had painted the head of a Man according to Art, would then joyn to it the neck of a horſe, and ſo marr the one and the other, whereas each by it ſelf might have been a peice of right good workmanſhip.

The ſecond branch of my *Lordkeepers* rationall parte was enforced out of the laſt words of this addition, by which his Lordſhip ſaid, that they did not leave intire all Soveraign power, but that wherewith his Majeſtie is truſted, for the protection, ſafety, and happineſs of the people, as if his Lordſhip would infer that Soveraign power wherewith, *&c.* in this place, to be *terminum diminuentem* a term of diminution or quallification, and in that conſideration might induce us to accept it, but under his Lordſhips correction we cannot ſo interpret it. For firſt we are aſſured that there is no Sovereign power wherewith his Majeſtie is truſted either by God or Man, but onely that which is for the protection, ſafety and happineſs of his people, and therefore that limitation can make no impreſſion upon us, but we conceive it rather in this place to have the force *termini adaugentis*, to be a term of important advantage againſt our Petition, a term of reſtriction, and that whereſoever his Majeſties Soveraign power ſhould be exerciſed upon us in all or any the particulars mentioned in the Petition, we ſhould without further inquiry ſubmit thereunto as aſſuming and taking it *pro conceſſo* it induced to our ſafety and happineſs, *&c.* Since therefore (as the Petition is now conceived) it carrieth the form and face of a picture, which repreſenteth to the life the preſſures and grievances of the peoples, with the eaſie remedies. And therefore we hope that his Majeſties caſting upon it a gratious eye, will compaſſionate his poor loyall Subjects, and afford a comfortable anſwer.

I do humbly pray your Lordſhips not to marr or blemiſh the grace and face of this picture with this unneceſſary addition, and unneceſſary I prove it to be, according to that Rule *expreſſio ejus quod tacitè ineſt nihil operatur*. And Soveraign power in Caſes where it hath

hath place, and ought to be uſed, is alwayes neceſſarily underſtood, and though not expreſſed, yet ſupplied by reaſonable intendment, or by the opinion of all Learned men.

And therefore as it neither is, nor can be by us expreſly included, eſpecially in this Petition, where the addition thereof would make ſuch a confuſion of the whole ſence and ſubſtance.

The *Kings* Soveraign power and Prerogative is alwayes able to ſave it ſelf, and if it were not, we muſt without this addition ſave it to our utmoſt powers, if we will ſave our Oath, and ſave our ſelves. The true ſtate of the cauſe thus ſtanding between your Lordſhips and us, the Houſe of Commons doth not a little marvel upon what grounds your Lordſhips are ſo earneſt, to urge upon them this addition to be inſerted into their Petition, they nothing doubt, but that the ſame proceeded out of a ſollicitude and fear which your Lordſhips have, leaſt otherwiſe the ſimple and abſolute paſſage of this Petition might be conſtrued hereafter in prejudice of his Majeſties Soveraign power. And this your Lordſhips ſollicitude and fear proceedeth from your love, as the Poet ſaith, *Res eſt ſolliciti plena Timoris Amor*: But I humbly pray your Lordſhips to examine with us the grounds of this your ſollicitude and fear, which grounds needs muſt be laid either upon the words of the Petition, or the intention of the Petitioners.

Upon the words there is no poſſibility to lay them, for therein is no mention of the Soveraign power. And were the words doubtfull as thus, we pray the like things be not done hereafter, under pretext of your Majeſties Soveraign power, yet in reſpect of the Proteſtations preceeding concommitant and ſubſequent to the Petition, ſuch doubtfull words ought reaſonably to be interpreted onely of ſuch Soveraign power as was not applyable to the caſes wherein it was exerciſed, and of ſuch Soveraign power as ſhould be juſtly practiſed. But there are no ſuch doubtfull words, and therefore it followeth that your Lordſhips fear and ſollicitude muſt be grounded upon the intention of the Petitioners. Now your Lordſhips well know that the Houſe of Commons is not ignorant, that in a Seſſion of Parliament, though it continue as many weeks, as this hath done dayes, yet there is nothing *prius & poſterius*, but all things are held and taken as done at one time, If ſo, what a ſtrange collection was this, that at the ſame time, the Houſe of Commons ſhould oblige themſelves by a fearfull adjuration, to aſſiſt and defend all Priviledges and Prerogatives belonging to the *King*, and at the ſame time by a Petition (cautiouſly conveyed) indeavour, or intend to diveſt and deprive the *King* of ſome Prerogatives belonging to his Crown. If therefore ſuch fear and ſollicitude can neither be grounded upon the words of the Petition nor intention of the Petitioners, I humbly pray your Lordſhips to lay them aſide, as we do believe that the propoſition of this addition from your Lordſhips was not onely excuſeable, but commendable as proceeding from your love, ſo now having heard our reaſons your Lordſhips would

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reſt ſatisfied, that our refuſal to admit them into our Petition proceedeth from the conſcience of the integrity and uprightneſs of our own hearts, That we in all this Petition have no ſuch end to abate, or diminiſh the *Kings* juſt Prerogative: And ſo much in reply to that rational part whereby my Lord *Keeper* laboured to perſwade the entertainment of this addition.

This being done, it pleaſed the Houſe of Commons to inſtruct and furniſh me with certain reaſons, which I ſhould uſe to your Lordſhips to procure your abſolute conjunction with us in preſenting this Petition, which albeit I cannot ſet forth according to their worth, and the inſtructions given me by the Houſe, yet I hope their own weight will ſo preſs down into your Lordſhips conſciences and judgements, that without further ſcruple you will cheerfully vouchſafe to accompany this Petition with your right noble preſence.

A Perſonis. The firſt argument wherewith I was commanded to move your Lordſhips, was drawn from the conſideration of the Perſons which are Petitioners: The Houſe of Common, a Houſe whoſe temper, mildneſs, and moderation in this Parliament hath been ſuch, as we ſhould be unthankfull, and injurious to Almighty God, if we ſhould not acknowledge his good hand upon us, upon our tongues, upon our hearts, procured (no doubt) by our late ſolemne and publick humiliation and prayers.

This moderation will the better appear, if in the firſt place we may be remembred, in what paſſion and diſtemper many Members of this Houſe arrived thither, what boſomes, what pockets full of complaints, and lamentable grievances the moſt part brought thither, and thoſe every day renewed by Letters and Packets from all parts and quarters. You know the old proverb *ubi dolor ibi digitus, ubi amor ibi oculus.* It is hard to keep our fingers from often handling the parts ill affected; but yet our moderation overcame our paſſion, our diſcretion overcame our affection; This moderation alſo will the better appear, if in the ſecond place it be not forgotten, how our Anceſtors and Predeceſſors carried themſelves in Parliaments, when upon lighter provocations leſs could not ſerve their turns, but new ſevere Commiſſions to hear, and determine offences againſt their Liberties, publick Eccleſiaſtical curſes, or excommunications againſt the Authors or Actors of ſuch violations, accuſations, condemnations, executions, baniſhments. But what have we ſaid all this Parliament? we onely look forward, not backward, we deſire amendment hereafter, no mans puniſhment for ought done heretofore: Nothing written by us in bloud; nay, not one word ſpoken againſt any mans Perſon in diſpleaſure. The concluſion of our Petition is, That we may be better intreated in time to come: And doth not this moderate Petition deſerve your Lordſhips cheerfull conjunction *ex congruo & condigno*? If a Worm, being troden upon, could ſpeak, a Worm would ſay, tread upon me no more I pray you, higher we riſe, not lower we cannot diſcend. And thus much

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we think in modeſty may well be ſpoken in our own commendation; thence to move your Lordſhips to vouchſafe us your noble Company in this Petition without ſurcharging it with this addition.

A tempore. Our next argument is drawn *a tempore* from the unſeaſonableneſs of the time. The wiſe man ſaith, there is a time for all things under the Sun *tempus ſuum.* And if in the wiſe mans Judgement a word ſpoken in its due time be precious as Gold and Silver, then an unſeaſonable time detracts as much from the thing, or word done, or ſpoken: We hold (under your favours) that the time is not ſeaſonable now for this addition. It is true, that of it ſelf Soveraign power is a thing alwayes ſo ſacred, that to handle it otherwiſe then tenderly, is a kinde of ſacriledge, and to ſpeak of it otherwiſe then reverently, is a kinde of blaſphemy, but every vulgar capacity is not ſo affected, the moſt part of men, nay almoſt all men judge and eſteem, all things not according to their own intrinſick virtue and quality, but according to their immediate effects, and operations which the ſame things have upon them. Hence it is, that Religion it ſelf receiveth more, or leſs credit and approbation, as the Teachers and Profeſſors are worſer, or better, Yea if God himſelf ſend a very wet Harveſt, or Seed-time, men are apt enough to cenſure Divine power. The Soveraign power hath not now for the preſent the ancient amiable aſpect in reſpect of ſome late ſad influences, but by Gods grace it will ſoon recover.

To intermix with this Petition any mention of Soveraign power (*rebus ſic ſtantibus*) when angry men ſay Soveraign power hath been abuſed, and the moſt moderate wiſh it had not been ſo uſed, we hold it not ſeaſonable under your Lordſhips correction.

A loco. Our next argument is drawn *a loco*, we think the place where your Lordſhips would have this addition inſerted, *viz.* in the Petition, no convenient, or ſeaſonable place; Your Lordſhips will eaſily believe that this Petition will run through many hands, every man will be deſirous to ſee, and to read what their Knights, and their Burgeſſes have done in Parliament upon their complaints, what they have brought home for their 5. Subſedies. If in peruſing of this Petition they fall upon the mention of Soveraign power, they preſently fall to arguing, & reaſoning, and diſcanting what Soveraign power is, what is the Latitude, whence the Original? and where the bounds? with many ſuch curious and captious queſtions, by which courſe Soveraign power is little advanced, or advantaged: For I have ever been of opinion that it is then beſt with Soveraign power, when it is had in *tacite veneratione*, not when it is prophaned by publick hearings, or examinations.

Our laſt argument is drawn from our duty and Loyalty to his Majeſty, in conſideration whereof we are fearfull at this time to take this addition into our Petition leaſt we ſhould do his Majeſty herein ſome diſſervice. With your Lordſhips, we make the great Councel of the *King* and Kingdom: And though your Lordſhips having the happi-

neſs to be near his Majeſty, know other things better, yet certainly the ſtate and condition of the ſeveral parts, for which we ſerve, their diſpoſitions and inclinations, their apprehenſions, their fears and jealouſies are beſt known unto us. And here I pray your Lordſhips to give me leave to uſe the figure called *Reticentia*, that is, to inſinuate, and intimate more then I mean to ſpeak. Our chief and principal end in this Parliament is to make up all rents, or breaches between the *King* and his Subjects, to draw them and knit them together from that diſtance whereof the world abroad takes too much notice to work a perfect union and reconciliation, how improperly and unapt at this time this addition would be in reſpect of this end, we cannot but foreſee, and therefore ſhun it, and do reſolve that it is neither agreeable to the Perſons of ſuch Councellors whom we are, nor anſwerable to that love and duty which we owe to his Majeſty to hazard an end of ſuch unſpeakable conſequence upon the admittance of this addition into our Petition, whereof (as we have ſhewed) the omiſſion at this time can by no means harm the *Kings* Prerogative, the expreſſion may produce manifold inconveniences, and therefore ſince the admittance of your Lordſhips addition into our Petition is incoherent and incompatible with the body of the ſame, ſince there is no neceſſary uſe of it, for the ſaving of the *Kings* rerogative, ſince the moderation of our Petition deſerveth your Lordſhips cheerfull conjunction with us, ſince this addition is unſeaſonable for the time, and inconvenient in reſpect of the place where your Lordſhips would have it inſerted; and laſtly may prove a diſſervice to his Majeſty.

I conclude with a moſt affectionate prayer to your Lordſhips to joyn with the Houſe of Commons in preſenting this Petition unto his ſacred Majeſty as it is without this addition.

The KINGS ſpeech in the Higher Houſe at the meeting of both Houſes, 2. June 1628.

Gentlemen,

I Am come hither to perform my duty, and I think no man will think it long, ſince I have not taken ſo many dayes in anſwering of the Petition as you have ſpent weeks in framing it, and I am come hither to ſhew you that as well in formall things as in eſſential, I deſire to give you as much content as in me lies.

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The Lord KEEPER in explanation of the ſame.

MY Lords, and you the Knights, Cittizens, and Burgeſſes of the Houſe of Commons, his Majeſty hath commanded me to ſay unto you, that he takes it in good part, that in conſideration how to ſettle your own Liberty, you have generally profeſſed in both Houſes, that you have no intention for to leſſen, or diminiſh his Majeſties Prerogative, wherein as you have cleared your own intentions, ſo his Majeſty now comes to clear his, and to ſtrike a firm league with his people, which is ever decreed to be moſt conſtant and perpetual, when the conditions are equal and known to be ſo: Theſe cannot be in a more happy eſtate, then when your Liberties ſhall be an ornament and ſtrength to his Majeſties Prerogative, and his Prerogative a defence to your Liberties. In this his Majeſty doubts not, but both you and he ſhall take a mutual comfort hereafter, and for his part he is reſolved to give an example in ſo uſing of his power, as hereafter you ſhall have no cauſe to complain. This is the ſumme of that which I am to ſay to you, Here read your own Petition, and his *Majeſties gracious anſwer.*

The KINGS anſwer to the Petition of Right, 2. June, by the Lord KEEPER.

THe *King* willeth that Right be done, according to the Laws and Cuſtomes of the Realm, and that the Statutes be put in due execution, that the Subject may have no cauſe to complain of any wrong, or oppreſſion contrary to their juſt Rights and Liberties, to the preſervation whereof, he holds himſelf in conſcience as well obliged, as of his Prerogative.

Sir JOHN ELLIOTS Speech 3. June.

Mr. Speaker,

WE ſit here as the great Councel of *the King*, and in that capacitie, it is our duty to take into conſideration the State, and affairs of the Kingdom, and where there is occaſion to give them in a true repreſentation by way of council and advice, with what we conceive neceſſary or expedient for them.

In this conſideration I confeſs many a ſadd thought hath affrighted me, and that not onely in reſpect of our dangers from abroad, which yet I know are great, as they have been often in this place

preſt and dilated to us, but in reſpect of our diſorders here at home we do inforce thoſe dangers and by which they are occaſioned; For I believe I ſhall make clear unto you, that both at firſt the cauſe of theſe dangers were diſorders, and our diſorders now are yet our greateſt dangers, and not ſo much the potency of our enemies, as the weakneſs of our ſelves do threaten us, and that ſaying of the Father may be aſſumed by us, *Non tam potentia ſua quam negligentia noſtra.* Our want of true devotion to heaven, our inſincerity and doubling in Religion, our want of Councels, our precipitate actions, the ſufficiency or unfaithfulneſs of our Generals abroad, the corruptions of our Miniſters at home, the impoveriſhing of the Soveraign, the oppreſſion and depreſſion, the exhauſting of our treaſures, waſte of our proviſions, Conſumption of our Ships, deſtruction of Men, This makes the advantage to our enemies, not the reputation of their Arms. And if in theſe there be not reformation, we need no Foes abroad, time it ſelf will ruine us.

To ſhew this more fully, as I believe you will all hold it neceſſary, that there ſeem not an aſpertion on the State, or imputation on the Government, as I have known ſuch mentions miſinterpreted, which far it is from me to propoſe, that have none but clear thoughts of the Excellency of his Majeſtie, nor can have other ends but the advancement of his glory: I ſhall deſire a little of your patience extraordinarily to open the particulars, which I ſhall do with what brevity I may, anſwerable to the importance of the cauſe and the neceſſity now upon us, yet with ſuch reſpect and obſervation to the time as I hope it ſhall not be troubleſome.

For the firſt then our inſincerity and dubling in Religon, the greateſt and moſt dangerous diſordor of all others, which hath never been unpuniſhed, and of which we have ſo many ſtrong examples of all States, and in all times to awe us, What teſtimony doth it want? will you have Authority of bookes? look on the collection of the Committee for Religion, there is too clear an evidence; will you have Recors? ſee then the Commiſſion procured for compoſition with the Papiſts in the North: Mark the proceedings thereupon: you will finde them to little leſs amounting then a tolleration in effect, thought upon ſome ſlight payments and the eaſineſs in them will likewiſe ſhew the favour thats intended, Will you have proofs of men, witneſs the hopes, witneſs the preſumptions, witneſs the reports of all the Papiſts generally, obſerve the diſpoſitions of Commanders, the truſt of Officers, the confidence of ſecrecies of imployments in this Kingdom, in *Ireland* and elſewhere, they all will ſhew it hath too great a certainty, and unto this add but the incontrolable evidence of that all-powerfull hand which we have felt ſo ſorely that gave it full aſſurance, for as the Heavens oppoſe themſelves to us for our impiety, ſo it is we that firſt oppoſe the Heavens.

For the ſecond, our want of Councels, that great diſorder in State, with

with which there cannot be ſtability, if effects may ſhew their cauſes as they are, after a perfect demonſtration of them, our misfortunes, our diſaſters ſerve to prove it, and the conſequence they draw with them, If reaſon be allowed in this dark age, the judgment of dependencies and foreſight of contingencies in affairs confirm it. For if we view our ſelves at home, are we in ſtrength, are we in reputation equall to our Anceſtors? if we view our ſelves abroad, are our Friends as many as our Enemies? Nay more, do our friends retain their ſafety and poſſeſſions? do our Enemies enlarge themſelves, and gain for them and us? what Councel to the loſs of the *Pallatinate*, ſacrificed we our honour and our men ſent thither, ſtopping thoſe greater powers appointed for that ſervice, by which it might have been defencible, what Councel gave direction to the late action? whoſe wounds are yet a bleeding, I mean the expedition to *Rhee*, of which there is yet ſo ſadd a memorie in all men, what deſign for us, or advantage to our State could that import? you know the wiſdom of our *Anceſtors*, the practice of their times, how they preſerved their ſafeties we all know and have as much cauſe to doubt as they had the greatneſs and ambition of that Kingdom, which the Old world could not ſatisfie againſt this greatneſs and ambition, we likewiſe know the proceedings of that Princeſs, that never to be forgotten Excellency of *Queen Elizabeth*, whoſe name without admiration falls not into mention with her Enemies, you know how ſhe advanced her ſelf, how ſhe advanced this Kingdom, how ſhe advanced this Nation in glorie and in ſtate, how ſhe depreſſed her Enemies, how ſhe upheld her Friends, how ſhe enjoyed a full ſecurity, and made them then our ſcorn, whom now are made our terror. Some of the principals ſhe built on, were theſe, and if I miſtake let reaſon and our Stateſmen contradict me.

Firſt to maintain (in what ſhe might) a unity in *France*, that that Kingdom being at peace within it ſelf might be a Bulwark to keep back the power of *Spain* by land.

Next to preſerve an amity and league between the States and us, that ſo we might come in aid of the low Countries, and by that means receive their Ships and help by ſea.

This treable-cord ſo working between *France* the States and us, might enable us as occaſion ſhould require to give aſſiſtance unto others, and by this means the experience of that time doth tell us, that we were not onely free from thoſe fears that now poſſeſs and trouble us, but then our Names were fearfull to our enemies. See now what correſpondency or actions had with this, ſquare it by theſe rules, that it induce a neceſſary conſequence of the diviſion of *France* between the Proteſtants and their *King*, of which there is too wofull and lamentable experience. It hath made an abſolute breach between that State and us, and ſo entertained us againſt *France*, *France* in preparation againſt us, that we have nothing to promiſe

our neighbours hardly for our ſelves. Nay but obſerve the time, in which it was attempted, and you ſhall finde it not onely varying from thoſe principals, but directly contrary and oppoſite *ex diametro* to thoſe ends, and ſuch as from the iſſue and ſucceſs rather might be through a conception of *Spain*, then begotten here with us.

Here there was an interruption made by Sr. Humfry May expreſſing a diſlike, but the Houſe of Commons commanded him to go on: it thus followeth:

Mr. *Speaker*,

I Am ſorry for this interruption, but much more ſorry if there hath been occaſion, wherein as I ſhall ſubmit my ſelf wholly to your judgement to receive what cenſure you ſhould give me, if I have offended. So in the integrity of my intentions and clearneſs of my thoughts, I muſt ſtill retain this confidence, that no greatneſs may deter me from the duties which I owe to the ſervice of my *King* and Countrey, but with a true *Engliſh* heart, that I ſhall diſcharge my ſelf as faithfully and as really, to the extent of my poor power, as any mans, whoſe honours, or whoſe Offices moſt ſtrictly have obliged him, you know the dangers *Denmark* is in, how much they concerned us, what in reſpect of our Alliance and the Countrey, what in the importance of the *Sound*, what an advantage to our Enemies the gain thereof would be? what loſs? what prejudice to us by this diviſion? we breaking upon *France*, *France* being inraged by us, the *Netherlands* at amazement between both, neither could we intend to aid that luckleſs *King*, whoſe loſs is our diſaſter: Can thoſe now that expreſs their troubles at the hearing of theſe things, and have been ſo often told us in this place of their knowledge in the conjunctures and disjunctures of affairs, ſay, they adviſed in this? Was this an Act of Councel Mr. *Speaker*? I have more charity then to think it, and unleſs they make a confeſſion of themſelves I cannot believe it.

For the next, the inſufficiency and unfaithfulneſs of our Generals, that great diſorders abroad, what ſhall I ſay, I wiſh there were not cauſe to mention it, and but out of the apprehenſion of the dangers that's to come, if the like chance hereafter be not prevented, I could willingly be ſilent. But my duty to my Soveraign, and the ſervice of this Houſe, the ſafety and Honour of my Countrey are above all reſpects: and what ſo nearly tendeth to the prejudice of this may not be forborn.

At *Calis* then, in that firſt expedition we made, when we arrived and found

found a Conqueſt ready, the *Spaniſh* ſhips I mean fit for the ſatisfaction of a Voyage, and of which ſome of the chiefeſt then there themſelves, have ſince aſſured me the ſatisfaction would have been ſufficient, either in point of Honour, or in point of profit, why was it neglected? why was it not atchieved, it being of all hands granted, how ſenſible it was after, when with the deſtruction of ſome men, and with the expoſition of ſome others, who though their fortune ſince have not been ſuch, by chance came off: When I ſay with the loſs of our ſerviceable men, that unſerviceable men were gained, and the whole Army landed, why was there nothing done, why was there nothing attempted? if nothing were intended, wherefore did they Land? if there were a ſervice, why were they ſhipt again?

Mr. *Speaker*, it ſatisfies me too much in this, when I think of their dry and hungry march unto that druncken quarter, for ſo the Souldiers term'd it, where was the period of their Journey, that divers of our men being left as a ſacrifice to the Enemy, that labour was at an end.

For the next undertaking at *Ree*, I will not trouble you much, onely this in ſhort, was not that whole action carried againſt the Judgement, and opinion of the Officers thoſe that were of Councel? was not the firſt, was not the laſt, was not all in the landing, in the intrenching, in the continuance there in the aſſault, in the retreat? did any advice take place of ſuch as were of Councel. If there ſhould be made a particuler inquiſition thereof theſe things will be manifeſt, and more I will not inſtance. Now the manifeſtation that was made for the reaſon of theſe Arms, nor by them nor in what manner, nor on what grounds it was publiſhed, nor what effects it hath wrought, drawing as you know almoſt the whole World in league againſt us, nor will I mention of the leaving of the Wines, the leaving of the Salt which were in our poſſeſſion, & of a value as they ſaid to anſwer much of our expence, nor that wonder which no *Alexander* or *Cæſar* ever did, the inriching of the Enemy by courteſies when the Souldiers wanted help, nor the private intercourſes and Parlies with the Fort which continually were held, what they intended may be read in the ſucceſs, and upon due examination thereof they would not want their proofs.

For the laſt Voyage to *Rochell*, there needs no obſervations, it is ſo freſh in memory, Nor will I make an inference or Corolory, and all your own knowledge ſhall judge what truth, or what ſufficiency they expreſſed. For the next, the ignorance and corruption of our Miniſters, where can you miſs of inſtances? if you ſurvey the Court, if you ſurvey the Countrey, if the Church, if the Cittie be examined, if you obſerve the Bar, if the Bench, if the Courts, if the ſhipping, if the Land, if the Seas: All theſe will render you variety of proofs, and in ſuch meaſure and proportion as ſhews the greatneſs of our ſickneſs, that if it have not ſome ſpeedy remedy, our caſe is moſt deſperate.

Mr. *Speaker*, I fear I have been too long in theſe particulers that are paſt,

paſt, and am unwilling to offend you, therefore in the reſt I ſhall be ſhorter, and in that which concerns the impoveriſhing of the *King*, no other arguments will I uſe, then ſuch as all men grant.

The Exchequer you know is empty, the Reputation thereof gone, the ancient Lands are ſold, the Jewels pawned, the Plate ingaged, the Debt ſtill great, almoſt all charges both ordinary and extraordinary born by Projects: What poverty can be greater, what neceſſity ſo great, what perfect *Engliſh* heart is not almoſt diſſolved into ſorrow for the truth, for the oppreſſion of the Subject? which as I remember is the next particuler I propoſed. It needs no demonſtration, the whole Kingdom is a proof, and for the exhauſting of our treaſures that oppreſſion ſpeaks it, what waſte of our proviſions, what conſumption of our ſhips, what deſtruction of our men have been, witneſs that Journey to *Argiers*.

Withneſs that with *Mansfield*.
Witneſs that to *Cales*.
Witneſs the next.
Witneſs that to *Rees*.
Witneſs the laſt, I pray God we may never have more ſuch witneſſeſs.
Witneſs likewiſe the *Pallatinate*.
Witneſs *Denmark*.
Witneſs the *Turks*.
Witneſs the *Dunkerkers*.
Witneſs all what loſſes we have ſuſtained, how we are impaired in Munition, in Ships in Men.

It hath no contradiction we were never ſo much weakned, nor had leſs hope how to be reſtored.

Theſe Mr. *Speaker* are our dangers, theſe are they do threaten us, and thoſe are like that *Troiane* horſe brought in cunningly to ſurprize us, in theſe do lurk the ſtrongeſt of our Enemies ready to iſſue on us, and if we do not now the more ſpeedily expell them, theſe are the ſign, the invitation to others.

Theſe will prepare their entrance that we ſhall have no means left of refuge or defence, for if we have theſe Enemies at home, how can we ſtrive with thoſe that are abroad? If we be free from theſe, no other can impeach us, our antient *Engliſh* virtue, that old *Sparton* valour cleared from theſe diſorders being in ſincerity of Religion once made friends with Heaven, having maturity of Councels, ſufficency of Generals, Incorruption of Officers, opulency in the *King*, Liberty in the People, repletion in Treaſures, reſtitution of Proviſions, reparation of Ships, preſervation of Men.

Our Antient *Engliſh* virtue thus rectefied I ſay, will ſecure us, and unleſs there be a ſpeedy reformation in theſe: I know not what hopes or expectations we may have.

Theſe

Theſe things Sir I ſhall deſire to have taken into conſideration, That as we are the great Councel of the Kingdom, and have the apprehenſion of theſe dangers, we may truely repreſent them unto the *King*, wherein I conceive we are bound by a treble Obligation of duty unto God, of duty to his Majeſty, and of duty to our Countrey.

And therefore I wiſh it may ſo ſtand with the wiſdom and Judgement of the Houſe, that they may be drawn into the body of a Remonſtrance, and therein all humbly expreſſed with a prayer unto his Majeſty for the ſafety of himſelf, and for the ſafetie of the Kingdom, and for the ſafety of Religion. That he will be pleaſed to give us time to make perfect inquiſition thereof, or to take them into his own wiſdom, and there give them ſuch timely reformation as the neceſſity of the cauſe, and his Juſtice doth import.

And thus Sr. with a large affection and Loyalty to his Majeſty, and with a firm duty and ſervice to my Countrey, I have ſuddenly, and it may be (with ſome diſorder) expreſſed the weak apprehenſion I have, wherein if I have erred I humbly crave your Pardon, and ſo ſubmit to the cenſure of the Houſe.

A Report from the COMMITTEE for Trade, 4. June 1628.

IN all other parts of Chriſtendom there is great care, with much coſt to raiſe Forts and walled Towns, onely for defence in time of War, and great charge to make Engines, and Weapons to offend the Enemy, of little or no uſe in time of Peace.

Whereas in *England* the Rampires, and Bulwarks, and Ships, and thoſe alſo for offence of the Enemy, our beſt Weapons are Engines.

And this alſo in time of Peace beſt inſtruments of our Wealth, even as uſefull as the Plough or Cart. But our ſhipping and our ſtrength of Marriners within theſe three years is much decayed in general. But the decay of Trade through diſturbance of the Merchant, by new Impoſitions and troubles, for want of a certain and well eſtabliſhed book of Rate and Bill of Tonnage and Poundage, uſed heretofore to be given for guarding of the Seas.

By reaſon that the Seas are not guarded ſo, That our Coaſts are infeſted, Our Fiſhermen driven from their Trade, And all our Coaſting ſmaller ſhipping ſo diſturbed, or taken, that in all parts of the Kingdom Sea-faring men give over, and the Seas are forſaken.

More particularly.

THat of our ſhipping of countenance of 100. Tuns or upwards, in the laſt three years there have been decayed, caſt away and taken by the Enemy, between *Dover* and *New-Caſtle* 248. great ſhips,

and with them proportionable number of Marriners, beſides great and ineſtimable loſſes in leſs Veſſels.

The cauſes whereof are diverſe diſorders in the late mannaging of Sea Affairs, before the imployment of Ships and Men in his Majeſties ſervice.

FIrſt, By preſſing and taking up Merchants ſhips, laden and bound out upon Voyages.

Secondly, By too frequent and general imbarques of ſhipping.

Thirdly, By taking out of ſhips unſeaſonably and and unreaſonable numbers, their beſt men, ſo forcing them ill Mann'd to Winter Voyages, *&c.*

Fourthly, By giving too little allowance of Wages, and 2. ſhill. *per* Tun for Fraight of ſhips ſo taken, being but half that which Marchants allow.

Fifthly, By faults of inferior Miniſters, men, and ſhips diſcharged after preſſes, or imbarques, are put to ſuch charge that all decline not onely the ſervice, but the Trade of fiſhing and Sea-fareing, Thoſe that are really preſt come far from the Weſt, or the North to *Chatham* early in the year, and ſo with few Cloaths at the end of the Summer, naſty and weak, infect themſelves and others.

And in the imployment.

FIrſt, Are Commanders weak, young, ignorant Captains, *&c.*

Secondly, Are not provided of good Chirurgeons, and extraordinaries neceſſary for ſick men.

Thirdly, Both ſhips and men contrary to the wiſdom of former times are ſet out in Winter Voyages, long, and dark nights, and in our Northern Seas upon our dangerous Coaſts, which have conſumed a World of our Marriners, and diſcouraged others.

After the imployment.

FIrſt, If the Marriners come home ſick, no Hoſpitals, or Gueſt-Houſes (as in other Countreys) to relieve them.

Secondly, If after all their miſeries they return well, they are forced to ſue for their due Wages till all they have is ſpent: Opportunity of new imployment is loſt, and themſelves ſo diſcouraged, or put out of heart, that they either run away to the Enemy, or put themſelves in forraign ſervice, or betake themſelves to any thing rather then the Sea life.

And

And thoſe whoſe ſhips have been taken up 36. Moneths, ſome 30. ſome 20. ſome more, ſome leſs, ſtill complain they are not paid the ſmall fraight of 2. ſhill. *per* Tun, at firſt promiſed.

By this means they have neither Money nor will to repair their ſhips, and none build new almoſt in any part, by reaſon of their diſcouragements, and thoſe that do build, take care to build them unſerviceable to avoid preſſing, or taking up.

The Remedies propoſed in general.

FIrſt, That the State would be pleaſed to give all poſſible countenance and comfort to all ſorts of Merchants and Fiſhermen, both by better guarding of the Seas, by ſettling of the Book of Rates and Cuſtomes and duties, and by orderly regulating the many affairs according to the wiſdom of former times imploying of skilfull and experienced men, and more particulerly in allowing the old 5. ſhill. *per* Tun, to all ſuch as ſhall build new ſerviceable ſhips of 150. Tuns or upwards, upon a Certificate made before the Judge of the Admiralty to be duly paid by ſome Collectors of the Cuſtomes without further trouble.

Secondly, To increaſe the fraight from 2. ſhill. to 3. ſhill. *per* Tun, and Tonnage, to agree of the meaſure of Tonnage before the ſhips go into ſervice, that upon return ſpeedy payment may be made by ſome ſetled and publiſhed aſſignment.

Thirdly, That all arrearages due to owners of ſhips and Marriners that have ſer ved, may be paid out of the ſubſedies, and that a certain courſe of payment for the future may be eſtabliſhed and publiſhed.

His Majeſties Meſſage to the Houſe of Commons by the SPEAKER, 6. June 1628.

WHereas his Majeſty underſtanding that you did conceive his laſt Meſſage to reſtrain you in your juſt Priviledges, Theſe are to declare his intention that he had no meaning of barring you from what hath been your Right, but in the manner to avoid all ſcandals on his Councel and actions paſt, his Miniſters might not be, nor himſelf under their names taxed for their Councels, and that no ſuch particulers ſhould be taken in hand as would ask a longer time of conſideration then what he hath already prefixed, and ſtill reſolves to hold, that ſo for this time Chriſtendom might have notice of a ſweet parting between him and his people, which if it falls out his Majeſty will not be long from another meeting, when ſuch grievances (if there be any) at their leaſure and convenience may be conſidered.

The KINGS ſpeech, 7 June.

THe anſwer I have already given you was made with ſo good deliberation and approved by the judgement of ſo many wiſe men, that I could not have imagined but it ſhould have given you full ſatisfaction. But to avoid all ambiguous interpretations, and to ſhew you that there is no doubleneſs in my meaning, I am willing to pleaſe you in words as well as in ſubſtance. Read your Petition, and you ſhall have an anſwer I am ſure will pleaſe you.

Then the Petition of Right was read, and again the whole PARLIAMENT ſpake.

MAy it pleaſe your moſt Excellent Majeſty. The Lords ſpiritual and temporal, and Commons in Parliament Aſſembled: taking into their conſiderations that the good intelligence between your Majeſty and your people doth much depend upon your Majeſties anſwer unto their Petition of Right, formerly preſented with an unanimous conſent unto your Majeſty. Do moſt humbly beſeech your Majeſty, that you will be gratiouſly pleaſed to give a ſatisfactory anſwer thereunto in full Parliament.

Soit droit fait come eſt deſire par le Petition.

Let right be done as is deſired by the Petition.

The KING again.

THis I am ſure is full, yet no more then I granted you in my firſt anſwer, for the meaning of that, was to confirm all your Liberties, knowing according to your own proteſtations, that you neither mean nor can hurt my Prerogative. And I aſſure you, my Maxim is, that the peoples Liberties ſtrengthen the *Kings* Prerogative, and the *Kings* Prerogative is to defend the peoples Liberties.

You ſee now how ready I have ſhewn my ſelf to ſatisfie your demands ſo that I have done my part; wherefore if this Parliament hath not a happy concluſion, the ſin is yours, I am free of it.

The Motions of the Lower-houſe to the Higher, 7. June 1628.

THat the new granted ſubſedies might be expended, eſpecially upon three, or four of the moſt neceſſary of thoſe Propoſitions propounded by his Majeſty.

That they thought the moſt neceſſary imployments for the ſubſedies

ſedies were, firſt the repairing of our new impaired Navy Royal, and the decayed Sea munition. Secondly, the re-edifying of the breaches made in our Forts and Haven Towns. Thirdly, by a ſupply and ſpeedy aid and aſſiſtance for *Denmark*.

And whether in theſe they have judged rightly, or not the eminent and incroaching dangers of the preſent times might be a guide.

Alſo they made Declaration of the late Suits and Petitions of our Marriners, having lately received from them a Bill of grievances againſt the *Duke* for defect of payment, and that not of ſome few, but the whole Company. And that if herein they had not ſudden redreſs they muſt be forced to right themſelves upon him, as they ſhall finde opportunity.

Herein the Commons did declare that they thought themſelves bound in Conſcience (as helping the oppreſſed) and in pollicie in preventing all ſuch combuſtions to patronize and cheriſh them. Alſo they thought it expedient that all ſuch books as have been queſtioned in Parliament, and ſince tollerated might after the diſſolving thereof, by the virtue of the former Protection, paſs uncontroulable, and the Authors thereof without moleſtation.

In the interim, that this latter Propoſition was debating upon juſt occaſion being offered.

Sr. Thomas Wentvvorth delivered himſelf thus:

RIght wiſe, Right worthy, how many inſtigations importune the ſequel of my words. 1. The equity of your proceedings. 2. The honneſty of my requeſt, for I behold all your intendments grounded upon diſcretion and goodneſs, and your conſtitutions ſteered as well by charity as the extreamity of Juſtice.

This order (I ſay) and method of your proceedings, together with the opportunity offered of the ſubject in hand, have imboldned me to ſollicit for an extention of the late granted Protections in general. The Lawfulneſs and honneſty of the Propoſition depends upon theſe particulers. 1. The preſent troubles of the parties protected, having run themſelves into further, and almoſt irrecoverable hazard by preſuming upon, and feeding themſelves with the hopes of a long continuing Parliament, let the ſecond be this conſequence. That which is prejudicial to the moſt ought to adminiſter matter of advantage to the reſt. Sith then our interpellations and diſturbations amongſt our ſelves are unpleaſing to all moſt all, if any benefit may be collected, let it fall upon theſe, for I think the breach of our Seſſions can befriend none but ſuch, nor ſuch neither, but by means of this grant before hand. And becauſe it is profitable that his Majeſty may cauſe a remeeting the next Michalmaſs, let thither alſo reach there preſcribed

ſcribed time for Liberty, and that till then there protections ſhall remain in as full virtue and Authority as if the Parliament were actually ſitting.

This Speech at the firſt bred ſome diſtaſte, but afterwards ſeriouſly weighing the premiſes, they eaſily, and at laſt generally condiſcended, and ſo it is this day preferred to the Higher Houſe.

The KINGS Meſſage to the Lower Houſe, by Sr. HUMFREY MAY 10. of June 1628.

HIs Majeſty is well pleaſed that your return of Right and his anſwer, be not onely recorded in both Houſes of Parliament, but alſo in all the Courts of *Weſtminſter*, And that his pleaſure is it be put in print for his Honour and the content, and ſatisfaction of his people, and that you proceed cheerfully to ſettle buſineſſes for the good and reformation of the Common-wealth.

Eeight particulars all voted in the Houſe of Commons, 11. June 1628.

THe exceſſive power of the Duke of *Buckingham*, and the abuſe thereof, is the chief and principal Cauſe of all the miſchiefs that have happened to the *King* and *Kingdom*.

1. *Innovation of Religion.*
2. *Innovation of Government.*
3. *Diſaſters of deſigns abroad.*
4. *Not guarding of the Narrow Seas.*
5. *Not guarding the Forts.*
6. *The decay of Trade.*
7. *The decay of Shipping.*
8. *The want of Munition.*

The firſt Remonſtrance.

Moſt dread Soveraign,

AS with all Humble thankfulneſs, we your dutifull Commons now in Parliament Aſſembled, do acknowledge the great comfort we have had in the aſſurance of your Majeſties pious and gracious diſpoſition, So we think it our moſt neceſſary duty, being called

called by your Majeſty to conſult and adviſe of the great and urgent affairs of this Church and Common-wealth. And findeing them at this time in apparent danger of ruine and deſtruction, faithfully and dutifully to enform your Majeſtie thereof; and with bleeding hearts and bended knees to crave ſuch ſpeedy redreſs therein, as to your own wiſdom (unto which we humbly ſubmit our ſelves and our deſires) ſhall ſeem moſt meet and convenient, what the multitude and potency of your Majeſties Enemies are abroad, what be their malitious and ambitious ends, and how vigilant and conſtantly induſtrious they are in purſuing the ſame, is well known to your Majeſty. Together with the dangers threatned thereby to your ſacred Perſon and your Kingdoms, and the calamity which hath already fallen, and doth dayly increaſe upon your Friends and Allies, of which we are all well aſſured your Majeſty is moſt ſenſible, and will accordingly in your own great wiſdom, and with the graveſt and moſt mature Councel, according to the exigency of the times and occaſions, provide by all means to prevent and help the ſame. To which end, we moſt humbly intreat your Majeſty firſt, and eſpecially to caſt your eyes upon the miſerable condition of this your own Kingdom of late ſo ſtrangely weakned, impoveriſhed, diſhonoured, and dejected, That unleſs through your Majeſties moſt gracious wiſdom, goodneſs, and Juſtice it be ſpeedily raiſed to a better condition, it is in no little danger to become a ſudden prey to the Enemies thereof. And of the moſt happy and flouriſhing, to be the moſt miſerable and contemptible Nation in the World. In the diſcovery of which dangers, miſchiefs, and inconveniences lying upon us, we do freely proteſt that it is far from our thoughts to lay the leaſt aſpercion upon your Majeſties ſacred Perſon, or the leaſt ſcandal upon your Government, for we do in all ſincerity, and with all joyfulneſs of heart, not onely for our ſelves, but in the name of the whole Commons of *England*, whom we repreſent, aſcribe as much honour to your Majeſty, and acknowledge as much duty as a moſt loyal and affectionate people can do unto the beſt *King* (for ſo you are) and ſo you have been pleaſed abundantly to expreſs your ſelf this preſent Parliament by your Majeſties clear and ſatisfactory anſwer to our Petition of Right, for which, both we, our ſelves, and our poſterities ſhall bleſs God for you, and ever preſerve a thankfull memory of your great goodneſs and Juſtice therein, and we do verily believe that all, or moſt of thoſe things which we ſhall now preſent unto your Majeſty, are either unknown unto your Majeſty, or elſe by ſome of your Majeſties Miniſters, offered under ſuch ſpecious pretences, as may hide their own bad intentions, & ill conſequence of them from your Majeſty. But we aſſure our ſelves, that according to the good example of your moſt noble Predeceſſors nothing can make your Majeſty (being a Wiſe and Judicious *Prince*, and above all things deſirous of the welfare of your people) more in love with Parliaments then this, which is one of the principal

ends

ends of calling them, that therein you may be truely informed of the State of all the ſeveral parts of your Kingdom, and how your Officers and Miniſters do behave themſelves in diſcharge of the truſt repoſed in them by your Majeſty, which is ſcarce poſſible to be made known unto you, but in Parliament as was declared by your bleſſed Father, when he was pleaſed to put the Commons, in Parliament aſſembled, in minde, that it would be the greateſt unfaithfulneſs and breach of duty to his Majeſty, and of the truſt committed to them by their Countrey that could be, if in ſetting forth the grievances of the people, and the condition of all the parts of this Kingdom from whence they came, they did not deal clearly with him, without ſparing any, how near and deer ſoever they were unto him, if they were hurtfull or dangerous to the Common-wealth.

In confidence therefore of your Majeſties gracious acceptation in a matter of ſo high importance, and in faithfull diſcharge of our duties, we do firſt of all moſt humbly beſeech your Majeſty, to take notice that howſoever we know your Majeſty doth with your Soul abhor that any ſuch thing ſhould be imagined, or attempted, yet there is a general fear conceived in your people of ſome ſecret working and combination to introduce into this your Kingdom innovacion, and change of our holy Religion, more precious to us then our lives, and what ever this World can affoard. Our fears and jealouſies herein are not meerly conjectural, but ariſing out of ſuch certain and viſible effects as may demonſtrate a true and real cauſe. For notwithſtanding the many good, and wholſom Laws, and proviſions made to prevent the increaſe of Popery within this Kingdom, and notwithſtanding your Majeſties gracious and ſatisfactorie anſwer to the Petition of both Houſes in that behalf preſented unto your Majeſtie at *Oxford*, we finde there hath followed no good execution or effect, but on the contrary (at which your Majeſtie out of the quick ſence of your own Religious heart cannot, but be in the higheſt meaſure diſpleaſed) thoſe of that Religion do finde extraordinarie favours and reſpects in Court from Perſons of great quality and power there, unto whom they continually reſort, and in particuler to the Counteſs of *Buckingham*, who her ſelf openly profeſſing that Religion is a known favourer and ſupporter of them that do the ſame, which we well hoped upon your Majeſties anſwer to the aforeſaid Petition of *Oxford* ſhould not have been permitted, nor that any of your Majeſties Subjects of that Religion, or juſtly to be ſuſpected, ſhould be entertained in the ſervice of your Majeſty, or of your Royal conſort the *Queen*, ſome likewiſe of that Religion have had Honours, Offices, and places of Command and Authority lately conferred upon them. But that which ſtriketh the greateſt terrour into the hearts of your Loyal Subjects concerning this point, is, That Letters of ſtay of Legal proceedings againſt them have been procured from your Majeſty (by what indirect means we know not) and Commiſſions under the great Seal granted and executed

cuted for compoſitions to be made with Popiſh Recuſants, with inhibitions and reſtraints both to the Eccleſiaſtical and Temporal Courts and Officers, to intermeddle with them, which is conceived to amount to no leſs then a toleration, odious to God, full of diſhonour and extream diſprofit to your Majeſtie, of great ſcandal and grief to your good people, and of apparent danger to the preſent eſtate of your Majeſtie and of this Kingdom, their numbers, power and inſolencies dayly increaſing in all parts of your Kingdom, and in ſpecial about *London* and the Suburbs thereof, where exceeding many families of them do make their aboad, and publickly frequent Maſs at *Denmark Houſe* and other places, and by their often meetings and conferences have opportunities of combining their counſels and ſtrength together, to the hazard of your Majeſties ſafety and the State, and eſpecially in theſe doubtfull and calamitous times.

And as our fear concerning change or ſubverſion of Religion is grounded upon the dayly increaſe of Papiſts, the open and profeſſed enemies thereof, for the reaſons formerly mentioned, ſo are the hearts of your good Subjects no leſs perplexed, when with ſorrow they behold a dayly growth and ſpreading of the faction of the *Arminians*, that being (as your Majeſtie well knows) but a cunning way to bring in Popery, and the profeſſors of thoſe opinions the common diſturbers of the Proteſtant Churches, and Incendiaries in thoſe States wherein they have gotten any head, being Proteſtants in ſhew, but Jeſuits in opinion and practiſe, which cauſed your royall Father, with ſo much pious wiſedom and ardent zeal, to endeavour the ſuppreſſing of them, as well at home as in the neighbour Countries. And your gratious Majeſtie imitating his moſt worthy example, hath openly and by your proclamation declared your miſlike of thoſe perſons, and of their opinions; who notwithſtanding are much favoured and advanced, not wanting friends even of the Clergy near to your Majeſtie, namely Doctor *Neal* Biſhop of *Wincheſter*, and Doctor *Lawd* Biſhop of *Bath* and *Wells*, who are juſtly ſuſpected to be unſound in their opinions that way. And it being now generally held the way to preferment and promotion in the Church, many Scholars do bend the courſe of their ſtudies to maintain thoſe Errors. Their books and opinions are ſuffered to be printed and publiſhed, and on the otherſide the impreſſion of ſuch as are written againſt them, and in defence of the Orthodoxall Religion, is hindered and prohibited. And (which is a boldneſs almoſt incredible) this reſtraint of Orthodox books is made under colour of your Majeſties formerly mentioned proclamation, the intent and meaning whereof we know was quite contrary. And further to increaſe our fears concerning Innovation in Religion, we finde that there hath been no ſmall labouring to remove that which is the moſt powerfull means to ſtrengthen and increaſe our own Religion, and to oppoſe both theſe, which is the diligent teaching and inſtructing the people in the

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true knowledge and worſhip of Almighty God, and therefore means have been ſought out to depreſs and diſcountenance pious, painfull and Orthodox preachers, and how conformable ſoever and peacefull in their diſpoſition and carriage they be, yet the preferment of ſuch is oppoſed, and inſteed of being incourraged they are moleſted by vexatious courſes and purſuites and hardly permitted to lecture, even in thoſe places where are no conſtant preaching Miniſters, whereby many of your good people (whoſe ſouls in this caſe we beſeech your Majeſtie to comiſerate) are kept in ignorance and are apt to be eaſily ſeduced to error and ſuperſtition.

It doth not a little alſo increaſe our dangers and fears this way to underſtand the miſerable condition of your Kingdom of *Ireland*, where without controul the Popiſh Religion is openly profeſſed and practiſed in every part thereof, Popiſh Juriſdiction being there generally exerciſed and avowed, Monaſtries, Numeries, and other ſuperſtitious houſes newly erected, redified and repleniſhed with men and women of ſeveral orders, and in a plentifull manner maintained in *Dublin*, and moſt of the great Towns and divers other places of the Kingdom, which of what ill conſequence it may prove if not ſeaſonably expreſt we leave to your Majeſties wiſedom to judge, But moſt humblie beſeech you (as we aſſure our ſelves you will) to lay the ſerious conſideration thereof to your royal and pious heart, and that ſome timelie courſe may be taked for redreſs therein.

And now if to all theſe your Majeſtie will be pleaſed to add the conſideration of the circumſtance of time, wherein theſe courſes tending to the deſtruction of true Religion within theſe your Kingdoms have been taken here, even then when the ſame is with open force and violence proſecuted in other countries, and all the reformed Churches of Chriſtendom either depreſſed or miſerably diſtreſſed, we humblie appeal unto your Majeſties *Princely* Judgment whether there be not juſt ground of fear that there is ſome ſecret and ſtrong cooperating here with the enemies of our Religion abroad for the utter extirpation thereof, And whether of theſe courſes be not ſpeedily redreſt, and the profeſſion of true Religion more encourraged, we can expect any other then miſery and ruine ſpeedily to fall upon us, eſpecially if beſides the viſible and apparant dangers wherewith we are compaſt round about, you would be pleaſed piouſly to remember the diſpeaſure of Almightie God alwaies bent againſt the neglect of his holie Religion, the ſtroak of whoſe divine Juſtice we have alreadie felt and do ſtill feel in great meaſure.

And beſides this fear of Innovation in Religion, we do in like faithfull diſcharge of our duties moſt humbly declare to your Majeſtie, that the hearts of your people are full of fear of Innovation and change of government, and accordingly poſſeſt with extream grief and ſorrow; yet in this point by your Majeſties late anſwer to our Petition of right touching our libertie, much comforted and

raiſed

raiſed again out of that ſadneſs and diſcontent which they generallie had conceived throughout your whole Kingdom at the undue courſes which were the laſt year taken for raiſing of money by loans, then which(what ever your Majeſtie hath been enformed to the contrarie) there was never mony demanded or paid with greater grief and general diſlike of all your faithfull Subjects, though manie partly out of fear and partlie out of other reſpects, yet moſt unwillinglie were drawn to yield to what was then required.

The billiting of ſouldiers did much augment both their fears and griefs, wherein likewiſe they finde much comfort upon your late gratious Anſwer to our Petition of right and to that we preſented to your Majeſtie concerning this particular, yet we humblie beſeech your Majeſtie that we may inform you that the ſtill continuance and late re-enforcing of the numbers of thoſe Souldiers, the conditions of their Perſons (many of them being not Natives of this Kingdom, nor of the ſame but of an oppoſite Religion, the placing of them upon the Sea coaſt, where making head among themſeves, they may unite with a Popiſh partie at home if occaſion ſerve or joyn with an envading Enemy to do extream miſchief, and that they are not diſmiſſed, doth ſtill miniſter cauſe of jelouſie to your loving Sujects, for that theſe Souldiers cannot be continued without exceeding great danger of the peace and ſafetie of your Kingdom.

The report of the ſtrange and dangerous purpoſe of bringing in of *Germain* horſes and Riders would have turned our doubts into diſpair, and our fears into a certainty of confuſion, had not your Majeſties gratious Meſſage(for which we give you humble thanks)comforted us, by the aſſurance of your Royal word that they neither are nor were intended by your Majeſtie for any ſervice in *England*, but that they were deſigned for ſome forraign imployment, yet the ſight of the privie ſeal, by which ſeemeth they were to be levied for this place, the great ſome of money, which upon examination we found had been made ever for that purpoſe, That much about the ſame time there was a commiſſion under the great Seal granted to the Lords and others of your privie Councel to conſider (as of other wayes of raiſing of monies) ſo particularlie by impoſition, gave us juſt cauſe to ſuſpect that what ever was your Majeſties own gratious intention, yet there wanted not thoſe that under ſome colourable pretence might ſecretlie by this (as by other wayes) contrive to change the frame both of Religion and Government, and thereby undermine the ſafetie of your Majeſtie and your Kingdoms, theſe men could not be ignorant that the bringing in of ſtrangers for aid hath been pernitious to moſt States where they have been admitted, but to *England* fatall. We do bleſs God that hath given your Majeſtie a wiſe and underſtanding heart, to diſcern of the miſchief of ſuch courſes, and that ſuch power produceth nothing but weakneſs and calamitie. And we beſeech your Majeſtie to pardon the vehe-

mencie of our expreſſions, if in the loyall and zealous affections we bear to your Majeſtie and your ſervice, we are bould to declare to your Majeſtie and the whole world, that we hold it far beneath the heart of any free *Engliſh* man to think that this victorious Nation ſhould now ſtand in need of *Germaine* Souldiers to defend their own *King* and Kingdom.

But when we conſider the courſes formerlie mentioned concerning the undermining of Religion, and theſe things tending to an apparant change of government, the often breach of Parliaments, where by your Majeſtie hath been deprived of the faithfull Councels and free aids of your people, The taking of tonnage and pondage, without any grant thereof by Act of Parliament ever ſince the beginning of your Majeſties raign to this preſent, The ſtanding commiſſion granted to the *Duke* of *Buckingham* to be General of an Army within the land in the time of peace, The diſplaceing of faithfull and ſufficient Officers and Miniſters, ſome from Judicial places, and others from the Offices and Authorities which formerly they held in the Common-Wealth, we cannot but at the ſight of ſuch an approaching deſolation, as muſt neceſſarilie follow theſe courſes, out of the depth of ſorrow lift up our cries to Heaven for help, and next under God humbly applie our ſelves to your ſacred Majeſtie, and falling down at your feet do beſeech you to harken to the voice of all your people, who if you could hear ſo many thouſands ſpeaking altogether, would all joyntly implore ſpeedy help and reformation.

And if yet your Majeſtie will be pleaſed to take a further view of the preſent eſtate of your Realm, we do humblie pray you to conſider whether the miſerable diſaſters and ill ſucceſs that hath accompanied all your late deſignes and actions, particularly thoſe of *Cales*, the Iſle of *Rhee*, and the laſt expedition to *Rochel*, have not extreamlie waſted that ſtock of honour that was left unto this Kingdom, ſometimes terrible to all other Nations, and now declining to contempt beneath the meaneſt, together with our honour we there loſt, thoſe, and that not a few, (who had they lived) we might have had ſome better hope of recovering it again, Our valiant Collonels, Captains and Commanders and many thouſand common Souldiers, and Marriners, though we have ſome cauſe to think that your Majeſtie is not as yet rightlie enformed thereof, and that of ſix or ſeaven thouſand of your Subjects loſt at the Iſle of *Rhee*, your Majeſty received information but of a few hundreds: And that all this diſhonour and loſs hath been purchaſed with the Conſumption of above a million of Treaſure; many of your Forts are exceeding weak and decayed, and want both men and munition. And here we cannot but with grief conſider and complain of a ſtrange improvidence, (we think your Majeſtie will call it treacherie,) That your ſtore of powder, which by order of your privy Councel, dated the tenth

day

day of *December*, 1626. ſhould be conſtantly three hundred laſt, beſides a continual ſupplie of Twentie laſt a moneth for ordinarie expences, and were now fit (as we conceive) to be double. That proportion is at this time in the Tower (the preſent warrants being ſerved) but nine laſt and forty pound in all, which we tremble to think of. And that notwithdanding this extream ſcarcitie of powder, great quatities have been permitted to be ſould out of your Majeſties ſtore to particular perſons for private gain, whereof we have ſeen a certificate of fortie ſix laſt ſould ſince the fourteenth of *January* laſt, And your Majeſties ſtore being unfurniſhed of powder, which by a contract made with Mr. *Evelin* by the adviſe of the Lords in Parliament, ought to be ſupplied monthly with twentie laſt, at the rate of 3 *l.* 10. *s.* 10. *d.* the barrel, Your Majeſtie hath been forced to pay above 7. *l.* a barrel for powder to be brought from beyond the Seas, for which purpoſe 12400. *l.* hath been impreſt to Mr. *Burlamacho* the laſt year, and that powder not ſo good as that which by contract your Majeſtie ſhould have of your own by one third part, All which are moſt fearfull and dangerous abuſes.

But what the poverty, weakneſs and miſerie your Kingdom is now grown unto by decay of trade, by deſtruction and loſs of ſhips and Marriners within theſe three laſt years, we are almoſt afraid to declare. And could we have been aſſured that your Majeſty ſhould any other way have had a true information thereof, we ſhould have been doubtfull to have made our weakneſs and extreamity of misfortune in this kinde to appear. But the importunate and moſt pittifull complaints from all the parts of your Kingdom near adjoyning to the ſea in this kinde would rend (we think) the ſtrongeſt heart in the world with ſorrow: And the ſence we have of the miſerable condition your Kingdoms is in by reaſon thereof, eſpecially for that we ſee no preſent poſſible means (being now ſhortly to end this ſeſſion) how to help the ſame, adds ſuch a weight of grief unto our ſadd thoughts as we have no words to expreſs it, But for your Majeſties more exact reformation herein, we beſeech you be pleaſed to peruſe the Kallandar of particulars, which with this our Remonſtrance, we moſt humbly preſent unto your Majeſtie.

One reaſon (amongſt many others of this decay of trade and loſs of ſhips & Marriners) is the not guarding ſeas, the Regalitie whereof your Majeſty hath now in a manner wholly loſt, and that wherein a principal part of the honour and ſafetie of this Kingdom heretofore conſiſted (in having the abſolute command of the ſeas) is now ſo neglected, that the Town of *Dunkerk* doth ſo continuallie beat, robb, and ſpoil your Subjects, that we can aſſure your Majeſtie if ſome preſent and effectual remedie be not forthwith provided, the whole trade of this Kingdom, the ſhipping and Marriners belonging thereunto will be utterly loſt and conſumed.

The principal cauſe of theſe Evils and Dangers we conceive to be

the exceſſive power of the *Duke* of *Buckingham*, and the abuſe of that power. And we humbly ſubmit it to your Majeſties Excellent wiſdom whether it can be either ſafe for your ſelf or your Kingdom that ſo great power as reſts in him, both by ſea and land ſhould be in the hands of any one Subject whatſoever. And as it is not ſafe, ſo ſure we are it cannot be for your ſervice, it being impoſſible for any one man to mannage ſo many and ſo weightie affairs of the Kingdom as he hath undertaken, beſides the ordinary duties of thoſe great offices which he holds, ſome of which well performed would require the time and induſtrie of the ableſt man both for Councel and action that your whole Kingdom could afford, eſpecially in theſe times of common danger.

And our humble deſire further is, that your moſt Excellent Majeſtie would be pleaſed to take it into your Princely conſideration, whether in reſpect the ſame *Duke* hath ſo abuſed his power, it be ſafe for your Majeſtie and your Kingdoms to continue him either in his great offices of truſt, or in his place of nearneſs and Councel about your ſacred perſon.

And thus in all humility aiming at nothing but the honour of Almightie God, the maintenance of his true Religion, the ſafetie and happineſs of your moſt Excellent Majeſtie, and the preſervation and proſperitie of this Church and Common-Wealth, we have endeavoured with faithfull hearts and intentions, and in diſcharge of the dutie we owe to your Majeſtie and our Countrey, to give your Majeſtie a true repreſentation of our preſent dangers and preſſing calamities, which we humbly beſeech your Majeſtie gratiouſly to accept, and to take the ſame to heart, acccompting the ſafety and proſperity of your people your greateſt happineſs, and their love your richeſt treaſure. A rufull and lamentable ſpectacle we confeſs it muſt needs be, to behold theſe ruines in ſo fair a houſe, ſo many diſeaſes (and almoſt every one of them deadly) in ſo ſtrong and well tempered a bodie as this Kingdom latelie was, yet we will not doubt but that God hath reſerved this honour for your Majeſtie, to reſtore the ſafety and happineſs thereof again as a work worthy ſo Excellent a *Prince*. For whoſe long life and true felicity we dayly pray, and that your fame and never dying glory may be continued to all ſucceeding generations.

A Kal-

A Kallender or Schedule of the ſhipping of this Kingdom, which have been taken by the enemy and loſt at ſea within the ſpace of three years laſt paſt.

Taken by the Enemy. — Ships of the burthen of 100. Tun, and upwards belonging to: *London.*, *Ipſwich.*, *Newcaſtle.*, *Hull.*, *Yarmouth,* *Aldborough.* — The ſhips 77 and furniture vallued at 62000.*l.*

Caſt away — Ships of the ſame burthen belonging to the ſame places 133 — The ſhips and furniture vallued at 100000.*l.*

Taken and caſt away — Ships of the like burthen belonging to: *Lynne.*, *Briſtol.*, *Dartmouth.*, *Portſmouth.*, *Southampton.*, *Waymouth.*, *Exceter.*, *Shoram.*, *Harwich.*, *Dover.*, *Woodbridge.*, *Sandwich.* — 50 The ſhips and furniture vallued at 35000.*l.*; Some 260 ſhips vallued at —— 197060.*l.*

Taken by the Enemy — Ships of 100 Tonne belonging to: *London.*, *Newcaſtle.*, *Hull.*, *Boſton.*, *Yarmouth.*, *Lynne.*, *Aldborough.*, *Dover.*, The County of Suſſex, *Pool.*, *Southampton.*, *Weymouth.*, *Exceter.*, *Dartmouth.*, *Briſtol.* — 130 The vallued not certified

Jerſey

Ferſey.
Scarbrough.
Soul and
Dunwich.

Touching the Ports and Towns of
Portſmouth.
Weſtcheſter.
Milfordhaven
Bridgwater.
Baſtable.
Faymouth.
Foy.
Lynne Regis.
Iſle of *Whight*
Colcheſter.
Ferſey.
Low.
Whitby.
Bridlington.
Blackney.
Wels.
Orford.
Brightling-ſea
Rocheſter.
and divers other ſmall Ports.
} great loſſes whereof no particular is given

The goods and Merchandizes loſt in the ſhipping aforeſaid, and in Flemiſh bottoms fraighted by *Engliſh* Merchants to be imported into this Kingdom are of exceeding great vallue, the certainty whereof cannot now be expreſſed.

Onely one company of Merchants Trading to the Eaſtwards from London, Ipſwich, Hull, *and* New-caſtle *in half this ſpace of time have loſt one hundred thouſand pounds taken by the Enemy.*

A Great Number of Marriners, alſo proportionable to this loſs of ſhipping, have been taken and deſtroyed by the Enemy, and caſt away through diſorderly preſſing, and forcing upon Winter voyages, beſides many more by reaſon of their diſcouragements and want of pay have either run away to the Enemy or betaken themſelves to forraign ſervice, or to any other Trade rather then to lead a Sea-mans life to the ineſtimable loſs and danger of the Kingdom.

The

The Kings Anſwer to the Remonſtrance the 17 of June 1626.

Gentlemen.

UPon my Anſwer to your Petition of Right, I expected no ſuch declaration from you, which conteineth divers points of State, touching the Church and Common-Wealth. And I do conceive you do believe that I underſtood them better then your ſelves: but ſince the reading thereof, I perceive you underſtand theſe things leſs then I imagined, notwithſtanding I will take them into my conſideration as they deſerve.

The Kings Speech at the end of the Seſſion, June 26.

IT may ſeem ſtrange that I came ſo ſuddenly to end this Seſſion, therefore before I give any aſſent to the Bills, I will tell you the cauſe, though I muſt avow, that I owe an accompt of my actions to none, but to God alone.

It is known to every one that a while a go the Houſe of Commons gave me a Remonſtrance, how acceptable every man may judge, and for the merrit of it, I will not call that in queſtion, for I am ſure no wiſe man can juſtifie it. Now ſince I am truely informed that a ſecond Remonſtrance is preparing for me, to take away the profit of my Tonnage and Poundage, one of the chief maintenances of the Crown, by alleadging, that I have given away my right thereof by my anſwer to your Petition, This is ſo prejudiciall to me, that I am forced to end this Seſſion ſome few hours before I meant it, being not willing to receive any more Remonſtrances to which I muſt give an harſh anſwer.

And ſince I ſee to that end the Houſe of Commons beginneth already to make falſe conſtructions of what I granted in your Petition, leaſt it be worſe interpreted in the Countrey, I will now make a Declaration concerning the true intent thereof.

The profeſſion of both Houſes in the time of hammering, this Petition was no was to trench upon my prerogative, ſaying they had neither intention, nor power to hurt it. Therefore it muſt, needs be conceived, that I have granted no new, but confirmed the ancient Liberties of my Subjects: yet to ſhew the clearneſs of my intentions, that I neither repent nor mean to recede from any thing I have promiſed you. I do here declare that thoſe things which have been done, whereby many had ſome cauſe to ſuſpect the libertie of the Subject to be trenched upon, which indeed was the firſt and true ground of the Petition, ſhall not hereafter be drawn in example for

your prejudice and in time to come (in the word of a *King*) you ſhall not have like cauſe to complain.

But as for Tonnage and Poundage it is a thing I cannot want, and was never intended by you to ask, never meant I am ſure by me to grant.

To conclude, I command you all that are here to take notice of what I have ſpoken at this time to be the true intent and meaning of what I granted in your Petition; but eſpecially you my Lords, the Judges, for to you onely under me belongs the interpretation of Laws, for none of the Houſes of Parliament either joynt or ſeparate (what new doctrine ſoever may be raiſed) have any power either to make or declare a Law without my conſent.

The Second Remonſtrance.

Moſt Gratious Soveraign,

YOur Majeſties moſt Loyall and Dutifull Subjects the Commons in this preſent Parliament Aſſembled, being in nothing more carefull then of the Honour and proſperity of your Majeſty and the Kingdom, which they know doth much depend upon your happy Union and relation betwixt your Majeſtie and your people, do with much ſorrow apprehend, that by reaſon the incertainty of their continuance, together the unexpected interruptions which have been caſt upon them, and the ſhortneſs of time in which your Majeſtie hath determined to end this Seſſion, they cannot bring to maturity and perfection, diverſe buſineſſes of waight which they have taken into conſideration and reſolution as moſt important for the common good; Amongſt diverſe other things they have taken in eſpecial care for preparing a Bill for the granting to your Majeſtie ſuch a ſubſedy of Tonnage and Poundage, as might uphold your profit and revenew in as ample manner as their juſt care, and reſpect of Trade, wherein not onely the proſperity, but even the life of the Kingdom would permit, but being a work which will require much time and preparation by conference with your Majeſties Officers and with the Merchants, not onely of *London*, but alſo of other remote parts, they finde it not poſſible to be accompliſhed at this time, wherefore conſidering it will be much more prejudiciall to the right of the Subject, if your Majeſtie ſhould continue to receive the ſame without Authority of Law after the determination of a Seſſion, then if there had been a receſs by adjournment onely, in which caſe that intended grant would have related to the firſt day of the Parliament, and aſſuring themſelves your Majeſty is reſolved to obſerve that your Royall anſwer, which you have lately made to the Petition of Right of both Houſes of Parliament, Yet doubting leſt your Majeſty may be miſinformed concerning the particular caſe, as if you might continue to take

take thoſe ſubſedies of Tonnage and Poundage and other impoſitions upon Merchants, without breaking that anſwer they are forced by that dutie which they owe to your Majeſtie and to thoſe whom they repreſent to declare; that there ought not any impoſition to be laid upon the goods of Merchants exported or imported with common conſent by Act of Parliament: which is the right and inheritance of your Subjects, founded not onely upon the moſt ancient and Original conſtitution of this Kingdom, but often confirmed and declared in divers Statute Laws. And for the better manifeſtation thereof, may it pleaſe your Majeſtie to underſtand, that although your Royall predeceſſors the *Kings* of this Realm have often had ſuch ſubſedies and impoſitions granted unto them upon diverſe occaſions, eſpecially for the guarding of the Seas, and ſafe-guard of Merchants; yet the Subjects have been ever carefull to uſe ſuch cautions and limmitations in thoſe grants, as might prevent any claim to be made, That ſuch ſubſedies do proceed from duty, & not of free gift of the Subject, and that they have heretofore uſed to limmit a time in ſuch grants, and for the moſt part but ſhort, as for a year or two, and if it were continued longer, they have ſometimes directed a certain ſpace of ceſſation and intermiſſion, that ſo the right of the Subject might be more evident. At other times it hath been granted upon occaſions of War for a certain number of years, with proviſo, that if the War were ended in the mean time, then the grant ſhould ceaſe; And of courſe it hath been ſequeſtred into the hands of ſome Subjects to be imployed for the guarding of the coaſts, and it is acknowledged by the ordinary anſwers of your Majeſties predeceſſors in their aſſent to the Bills of ſubſedy of Tonnage and Poundage, That it is of the nature of other ſubſedies proceeding from the good will of the Subject, Very few of your predeceſſors had it for life until the raign of *Hen.* 7. who was ſo far from conceiving he had any right thereunto, that although he granted commiſſions for collecting certain duties and cuſtomes due by Law, yet he made no commiſſions for receiving the ſubſedy of Tonnage and Poundage, untill the ſame was granted unto him in Parliament: Since his time all the *Kings* and *Queens* of *England* have had the like grants for life by the free love and good will of the Subject.

And whenſoever the people have been grieved by laying any impoſition or other charges upon their goods or Merchandizes without Authority of Law, which hath been very ſeldom, yet upon complaint in Parliament they have been forthwith relieved, ſaving in the time of your Royal Father, who having (through ill Councel,) raiſed the rates and charges of Merchandizes to that height, at which they now are, was yet pleaſed to yield ſo far to the complaint of his people, as to offer, that if the vallue of thoſe impoſitions which he had ſet might be made good unto him, he would himſelf and his Heirs by act of Parliament be bound never to lay any other, which

offer the Commons at that time, in regard of the great burthen, did not yield unto. Nevertheleſs your Loyal Commons in this Parliament out of their eſpeciall zeal to your ſervice and ſpecial regard to your preſſing occaſions, to take into their conſiderations ſo to frame a grant of ſubſedy of Tonnage and Poundage to your Majeſtie, that both you might have been the better enabled for the defence of your Realm and your Subjects, from being ſecure from all undue charges, might be the more incouraged chearfully to proceed in their courſe of Trade, by the encreaſe whereof your Majeſties profit, and likewiſe the ſtrength of the Kingdom would be very much augmented, But not being now able to accompliſh this their deſire, there is no courſe left unto them without manifeſt breach of their duty both to your Majeſty and the Countrey, ſave onely to make this humble declaration, that the receiving of Tonnage and Poundage and other impoſitions not granted by Parliament, is a breach of the fundamentall Liberties of this Kingdom, and contrary to your Majeſties Royal Anſwer to the ſaid Petition of Right. And therefore they do moſt humbly beſeech your Majeſtie to forbear any further to receive the ſame, and not to take it in ill part from thoſe of your Majeſties loving Subjects who ſhall refuſe to make payment of any ſuch charges without warrant of Law demanded. And as by this forbearance your moſt Excellent Majeſtie ſhall manifeſt unto the world your Royal Juſtice in the obſervance of your Laws; So they not doubting, but that hereafter at the time appointed for their coming together again, they ſhall have occaſion to expreſs their great deſire to advance your Majeſties Honour and profit.

A Letter which was found among ſome Jeſuits that were lately taken at London and addreſſed to the Father Rector at Bruxills.

FAther *Rector*, let not the damp of aſtoniſhment ſeiz upon your moſt ardent and zealous ſoul in apprehending the ſudden and unexpected calling of the Parliament: we have not oppoſed, but rather furthered it, ſo that we hope as much in this Parliament as ever we feared in *Queen Elizabeths* dayes, You muſt know the Councel is ingaged to aſſiſt the *King* by the way of Prerogative in caſe the Parliamentary way ſhould fall, You ſhall ſee this Parliament will reſemble the Pellicane which takes a pleaſure to dig out with her beake her own bowels. The election of the *Knights* and *Burgeſſes* have been in ſuch confuſion and by ſuch apparant faction as that which we were wont to prove heretofore with much art and induſtry, (when the *Spaniſh* match was in treaty) now it breaks out naturally as a botch or boyl, and ſpets and ſpews out his own ranckor and venom, You may

may remmber how that moſt Famous and Immortall Stateſman the *Count* of *Gondomar* fed *King James* his fancy and rocked him aſleep with the ſoft and ſweet ſound of Peace to keep up the *Spaniſh* Treaty, Likewiſe we were much bound to ſome eminent Stateſmen of our own Countrey to gain time, in procureing thoſe advantagious Seſſions of Arms in the *Pallatinate*, and in admiring the worth and Honour of the *Spaniſh* Nation, and vilifying the *Hollanders*, remonſtrating to *King James* that State was moſt ungratefull both to his predeceſſor *Queen Elizabeth* and his Sacred Majeſtie, that that State was more obnoxious then the *Turk*, and perpetually injured his Majeſties Subjects in the *Eaſt Indies*, and likewiſe they had uſurped from him the regallitie of the narrow ſeas in fiſhing upon the *Engliſh* coaſts. Had the *Spaniſh* match taken effect, which was broken by the heat and violence of your furious Enemy the *Duke* of *Buckingham*, certainly if *King James* had diſerted the *Hollanders*, Thoſe great Stateſmen had but one means to further their great and good deſignes, which was to ſeiz on *King James*, that none but the Puritans faction, that plotted nothing but Annarchy and his confuſion were advanced to this moſt happie Union. We ſteered on the came courſe, and have made uſe of Annarchall election, and have prejudicated and anticipated the great one the *Duke* of *Buckhingham*, that none but the *Kings* Enemies and his are choſen of the Parliament, and that the Parliament vows to begin where they have left, and will never give over till they have exterpated him and his poſteritie. On the other ſide the ſame parties, who are to be admired for their indefitigable induſtrie, inceſſantly foment revenge and jelouſie in moſt of the Parliament men, and eſpecially they work upon the pride and vain glory of ſuch as have been impriſoned: acknowledging that they are the onely Martires and Worthies of the Country. *London* is as much diſtempered as ever *Florence* was, for the companies are at great odds, and the common Councel have oppoſed the Magiſtrates againſt the old cuſtom in the election of the *Knights*, which hath bred a great heart burning in the City, that twice a day we can divulge what we liſt in *Pauls*, and upon the *Exchange*, & we have already rendered our irreconciliable Enemy the *Duke* as odious as a Toad, ſo the people are apt to believe any thing againſt him. We hope to be revenged on that Ball of Wilde-fire the *Duke* ſhortly, and quench his fury: you ſhall ſee the ſame ſword that hath wounded us, drawn upon the wound with an oyl that we have annointed, it ſhall make us whole, and this ſhall be done: the Parliament is a great ſhip that hath daſhed twice againſt the ſame rock, and we have ſo wrought upon the ſeveral complexions of Parliament-men in charging the moſt temporate and wiſer ſort, that the beſt way to overthrow the *Duke*, is by humble Petition to his Majeſtie. With the violent ſort we have taken a contrary courſe, by working upon their paſſions and intreating their fancies with probabilities and preſidents, which

never were heard of that favourites; have but Parliament proofs, they may wraſtle for a time, but at laſt the Parliament hath ever overthrow them upon their backs, we incourrage them withall the wits we have to fall upon the *Duke*, and perſwade them now is the time or never, the *King* being in ſuch apparant neceſſity, inſomuch that we aſſure our ſelves that God hath ſo forſaken and infatuated them, that they ſhall not onely ſtrike and daſh upon the ſame rock again; but ſplit and wrack in the bottomleſs ſea of deſtruction, We have now many ſtrings to our bow, and have ſtrongly fortified our faction and have added two Bulwracks more, for when *King James* lived, you know, he was very vehement againſt *Arminianiſme* (interrupted with his peſtilent wit and deep learning) our ſtrong deſignes in *Holland*, and was a great Friend to that old Rebell and Heretick the *Prince* of *Orange*, now we have planted that Soveraign drug *Arminianiſme* which we hope will purge the Proteſtans from their *Hereſie*, and it flouriſhes and bears fruit in due ſeaſon, The materials which builds up the other Bulwarks, are the projectors and beggerers of all ranks and quallities whatſoever, both thoſe factions copulated to deſtroy the Parliament; and introduce a new ſpecies and form of government which is *Oligarchal*, Their factions ſerve as direct medicines and inſtruments to our ends, which is the univerſall Catholick Monarchy, our foundation is imitation, this Immitation will cauſe a relaxation, as ſo many violent diſeaſes in the body, as the Sone, Gout, and to the ſpeedy deſtruction or perpetuall and inſufferable anguiſh of the body, which is worſe then death it ſelf. We proceed with counſel and mature deliberation when and where to work upon the *Dukes* jealouſie, and revenge, In this we give the honour to thoſe that merit it, which are the Church Catholicks. There is another matter of conſequence which we take much into our conſideration and tender care, which is to ſtave the Puritans that they hang not upon the *Dukes* ears, they are impudent ſubtill people, and 'tis to be feared leaſt they ſhould negotiate a reconciliation betwixt the *Duke* and the Parliament, It is certain the *Duke* would have reconciled himſelf to the Parliament at *Oxford* and *Weſtminſter*, but now we aſſure our ſelves we have ſo handled the matter, that both the *Duke* and the Parliament are irreconciliable. For the better preventing of the Puritans, the *Arminians* have already blockt up the *Dukes* ears, and we have thoſe of our own Religion, which ſtand continuall Centinel at the *Dukes* Chamber dore to ſee who goes in and out, we cannot be two carefull and circumſpect in this regard. I cannot chuſe but laugh to ſee how ſome of our coat have accooted themſelves, you would ſcarce know them if you ſaw them; and it is admirable how in ſpeech & geſture they act the Puritans, the *Cambridge* Schollers to their wofull experience ſhall ſee, how we can act the Puritans a little better then they have acted the *Jeſuites*: they abuſed our Patron S. *Ignatius* in jeaſt, but we will make them

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ſmart for it in earneſt. I hope you will excuſe my merry digreſſion, for I confeſs unto you, I am at this inſtant tranſported with joy to ſee how happily all inſtruments and means, as well great as leſs, operate to our purpoſes. But to return to the maine Fabrick, our foundation is *Arminianiſme*, *Arminians* and projectors, as it appears in the premiſſes affect mutation, this we ſee in force by all probable Arguments, we can in the firſt place take into our conſideration the *Kings* Honour and his preſent neceſſity, and we ſhew how the *King* may free himſelf of his wardſhips as *Lewis* the 11. did, and for his great ſplender he may raiſe a vaſt revenew, and not beholding to his Subjects, which is by way of impoſition and exciſe, we inſtance in the low Countries, and ſhew what a maſs of monies they raiſed to pay their Armies by Sea and Land, meerly out of exciſe. Then our Church Catholicks ſhewed the means of this exciſe, which muſt be by a mercinary Army of Horſe and Foot; For the Horſe we have made it ſure, they ſhall be forraigners and *Germans*, who will eat up the *Kings* revenews and ſpoil the Countrie whereſoever they come, though they ſhould to be paid: what havock will they make then when they are not dayly paid? ſurely they will do much more miſchief: Then the Catholick Army of 10000. Horſe and 20000. Foot ſhall be taken over, and in pay before the mercinary Army ſuffocate the Country, Then the Souldiers and projectors ſhall be paid out of the confiſcation of the Country, to be had of the Souldiers, then they muſt conſequently mutiny, which is equall advantagious to our ſuperlative deſign, which is to work the Proteſtans as well as the Catholicks to wellcome a conqueſt, and this is by this means we hope inſtantly to diſſolve Trade, hinder the building of ſhipping in propounding probable deſigns, and putting the ſtay upon expedition, as that of *Cales* taking away the Merchants ſhips and feeding them with hope to take the *Weſt-Indies* Fleet, which is to ſeek a needle in a bottle of hay: his Catholick Majeſtie ſhall not want our beſt intelligence, beſides he hath ſo many piſtaſhawes and carvils which are ſpread abroad to diſcover, ſo you cannot be ſurprized in any harbor when Trade is ruined and ſhipping decayed, What will become of Noblemens and Gentlemens revenews? the Yeamen and Formers, in which conſiſts the infantry of this Kingdom, they will turn Rogues and reſemble the object peaſants in *France*, who are little better then ſlave. Trade and ſhipping is ſo much decayed already, that *London* is as it were beſeiged for want of fewel, Sea coles are at 30 ſhillings the chaldren. When things are brought to this perfection, which we hope will be by that time his Sacred Majeſtie hath ſetled his affairs in *Germany*; all the people in general will linger for a conqueſt, miſſing their means and revenews, which ſhould maintain and ſupport them, according to their ſeveral ranks and qualities; Then we aſſure our ſelves that the Lands which were rent and torn from the Church by that ravenous Monſter *Hen.* 8. ſhall be reſtored by our

mighty

mighty Protector his Catholick Majestie, to the recalling of those that are exiled, and deliver thousand of souls, which suffer persecution at home for the testimony of a good conscience. Joyn your prayers with ours, importuning the blessed *Virgin* and all the hoast of *Angels* and holy *Martyers* to intercede for us, and we doubt not God will make hast to help us. Thus hoping to see the *Count Tillies* and *Marquess Spinola* here about *July* come twelve-moneth: I rest. In the mean time we pray for a happy success in *Germany* and the *Low-Countries*.

From the County, *&c.* *Your loving friends*

I. W.
I. I.

Touching Barronets.

Motives to induce the Knights, Citizens and Burgesses of the Commons House of Parliament, to Petition his Majestie for the revokeing and abollishing of the degree of Barronets, lately erected by his Highnesses Letters patents.

First becaus this new degree is offensive to the Nobility of the Realm, whose descendants in all reason ought to have prime eminency amongst the Gentry of this Kingdom, yet *Barronets* by these patents are to have precedency before the descendants, from the younger children of *Barronets, Earles, Dukes,* &c.

And to the order of Knight-hood, becaus that degree brings a personal dignity and springing out of virtue and desert, ought to be rancken next and imediately unto Barrony. Nevertheles the degree of *Barronets* is interposed between Barrony and Knight-hood.

And unto the Gentry of this Kingdom, becaus many of the *Barronets* and their descendants, being meanly descended, must have precedency before Gentry of Auncient Family, who by this Innovation will be much vilified, and of small reckoning in the Common-Wealth.

And unto the Magistrates of this Kingdom, who in respect of their offices, and place wherein they serve, as also the gravity and wisdom of their Persons in publick services and assemblies, have used to have precedence before others: but now they must give place unto *Barronets* and their descendants, albeit some of them are,

and

and many of them in time to come may be mean in birth, poor in ſtate and of ſmall worth and deſert.

And unto the whole Communalty, whoſe deſcendants by their virtues and good fortunes may hereafter attain unto credit and reputation in the Common-Wealth.

Inconveniences that will ariſe to his Majeſtie and the State by reaſon of this new inſtitution.

THere will be always diſlike, envy and heart-burning between the Gentry of the Kingdom and the *Barronets*.

The Honour of Knight-hood, which was wont to incourage generous mindes unto high exploits, will now come int contempt, for be they of never ſo good proweſs and valour, they muſt by this inſtitution be inferior unto *Barronets* of ſmall worth: Knight-hood hath been held a competent reward for forraign and home imployments, and now his Majeſtie muſt be driven to ſearch new ways for the recompence and ſatisfaction of ſuch ſervices. Gentlemen of Lively-hood and eſtimation will refrain his Majeſties ſervice in publick Aſſemblies for the Adminiſtration of Juſtice and otherwiſe, becauſe they ſcorn to give place unto many of the *Barronets* whom they account their inferiors.

The reputation of Knight-hood and antiquity of diſcent hath in former times much advanced the Gentry ſo quallified in preferment to marriage who are very much prejudiced by this Hereditary Tittle: Great Noble men of this Kingdom have been degraded from thein particular dignity, for want of means to ſupport their Honours, but theſe *Barronets*, albeit they ſhall happen to be of no worth either in eſtate or deſert, muſt have precedence before *Knights* of greater reputation.

Nothing is more commended then Honour ſpringing out of virtue and deſert, but to purchaſe Honour with money, as *Barronets* have done, is a temporall ſymmony and diſhonorable to the States The Communalty of the Kingdom ever ſince the firſt inſtitution thereof hath conſiſted of certain degrees known and legall additions without change or alteration may by way of preſident alter the whole ſtrain of the Common-Wealth. His Majeſtie by his prerogative Royall Creates, *Barrons*, *Viſcounts*, *Earls*, and many other degrees of Nobillity as other his Anceſtors and Predeceſſors have done, but the creation of this or any other in Communalty is not warranted by any former preſident uſage or cuſtom.

mighty Protector his Catholick Majeſtie, to the recalling of thoſe that are exiled, and deliver thouſand of ſouls, which ſuffer perſecution at home for the teſtimony of a good conſcience. Joyn your prayers with ours, importuning the bleſſed *Virgin* and all the hoaſt of *Angels* and holy *Martyers* to intercede for us, and we doubt not God will make haſt to help us. Thus hoping to ſee the *Count Tillies* and *Marqueſs Spinola* here about *July* come twelve-moneth: I reſt. In the mean time we pray for a happy ſucceſs in *Germany* and the *Low-Countries*.

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The Examination of Andrevv Le Brun a Frenchman, Captain of the Mary of Rochel, taken before Abraham Celmer Merchant, Major of the Burrough of Plimouth 16 May 1628.

THe examinate ſaith, that one Sunday being the 17 of *April* laſt paſt, he departed from *Plimouth* harbor in company with the *Engliſh* Fleet, whereof the *Earl* of *Denbigh* is General: and one the firſt day of *May* then following, the ſaid Fleet arrived and came at Anchor at *Charleboy* in the rode of *Rochell* about 4 of the clock in the afternoone, where at the ſaid arriuall they found 20 ſail of the *King* of *France* his ſhips, whereof ſix were ſhips of about 300 Tuns, and the reſt were ſmaller ſhips, and forthwith the ſaid *French* ſhips put themſelves to ſail, and went in nearer to the Fortifications, where they alſo Anchored within two cannon ſhot of the *Engliſh* Fleet, And ſaith, that one of his Majeſtie ſhips ſhot off one peece of Ordinance, and no more, and the ſaid *French* ſhips, as they returned from the *Engliſh* Fleet ſhot off oftentimes to them, and that the ſame Fleet remained there untill the 8 day of the ſame month of *May*, in which time there was a Wherry ſent from the fleet into *Rochell*, wherein there were two *Engliſh* and one *French* man to inquire the State of the ſaid Town, and that if they were there ſafe arrived, they ſhould make a fire upon one of the Towers of the Town to give notice thereof, which accordingly they did, and alſo to make ſo many fires more one the Walls of the ſaid Town as they have moneths victualls there, but they made not any anſwer thereof. Whence it was collected that they had but a ſmall quantity of victualls, and ſaid, that the ſaid *Engliſh* (as he hath heard) promiſed to ſink the ſaid *French* ſhips when the waters did increaſe, and the winde came at *Weſt North-Weſt*, it being then neap tides, and about two days after the water did increaſe and the windes came accordingly, and being then intreated to fight with them, yet did not, but came away without fighting or releiving the Town, and ſaith, that one the 8 day of *May* the ſaid *Engliſh* Fleet weighed Anchor, and ſet ſail to depart, and 4 of the *French* great ſhips weighed Anchor alſo, and came after them, and ſhot divers times at the ſaid Fleet, and the ſaid Fleet ſhot at them again, and the ſaid examinate came in company with the ſaid Fleet as far as *Bell Iſle*, where he departed from them one the 10 of this inſtant, and laſtly ſaith, that during all the time the *Engliſh* Fleet was there, the Town of

Rochell

Rochel ſhot to the *King* of *France* his ſhips and Fort, but chiefly upon the arrival of the ſaid Fleet there.

Articles wherewith MELVINE is charged.

1. MR. *Melvine* ſaid that the *Dukes* plot was, that the Parliament ſhould be diſſolved, And that the *Duke* and the *King* with a great Army of Horſe and Fott would War againſt the cominalty, and that *Scotland* ſhould aſſiſt him, ſo that when War was amongſt our ſelves the Enemy ſhould come in, for this Kingdom is already ſould to the Enemy by the *Duke*.

2. That the *Duke* had a ſtronger Councel then the *King*, of which were certain *Jeſuites Scotiſh* men, and that they did ſit in Councel every night from one of the clock till three.

3. That when the *King* had a purpoſe to do any thing of what conſequence ſoever, the *Duke* could alter it.

4. That when the Ordinance were ſhipt at S. *Martins*, the *Duke* cauſed the Souldiers to go one, that they might be deſtroyed.

5. That the *Duke* ſaid, he had an Army of 16000. Foot and 1200. Horſe.

6. That *King James* his bloud and *Marqueſs Hambletons* with others cries out for vengeance to Heaven.

7. That he could not expect any thing but ruine of this Kingdom.

8. That *Prince Henry* was poyſoned by Sir *Thomas Overbury* and he himſelf ſerved with the ſame ſawce, and that the *Earl* of *Sommerſet* could ſay much to this.

9. That he himſelf had a Cardinal to his Uncle or near Kinſman, whereby he had great intelligence.

A Privy Seal for the tranſporting of Horſes 30 January 3. CAROLI.

CHarles by the grace of God *King* of *England*, *Scotland*, *France*, and *Ireland* defendor of the faith, *&c.* To the Treaſurer and under Treaſurer of our Exchequer for the time being, *greeting*. We do hereby will and command you, out of our Treaſury remaining in the receipt of the ſaid Exchequer, forthwith to pay or cauſe to be paid unto *Phillip Burlamachi* of *London* Merchant, the ſumm of 30000 *l.* to be paid by him over by Bill of Exchange unto the *Low-Countries* and *Germany* unto our truſtie and well be loved Sir *William Balfoore* Knight and *John Dalber* Eſquire or either of them, for levying and providing certain numbers of Horſe with Arms for Horſe and Foot to be brought over into this Kingdom for our ſervice, *viz.* For the levying and tranſporting of a 1000 Horſe; 15000 *l.*

for 5000 Muskets, 5000 Corſlets, 5000 Pikes, 10500 *l.* and for 1000 Curaſiers compleat 200 Corſlets and 200 Carbines 4500 *l.* Amounting in the whole to the ſaid ſumm of 30000 *l.* And this our Letter ſhall be your ſufficient warrant and diſcharge in this behalf. Given under our privy Seal at our Palace of *Weſtminſter* 30. of *Fanuary*, in the third year of our raign.

The Commiſſion to the Lords and others of the privy Councel concerning the preſent raiſing of money.

CHARLES by the grace of God *King* of *England Scotland France* and *Ireland*, defender of the faith, *&c.* To Sir *Thomas Coventry* Lord Keeper of the great Seal of *England*.
Fames Earl of *Marlburgh* Lord Treaſurer.
Henry Earl of *Mancheſter* Lord Preſident of the Councel.
Edward Earl of *Worceſter* Lord Keeper of the privy Seal.
George Duke of *Buckingham* our high Admiral of *England*.
William Earl of *Pembroke* Lord Steward of our Houſhould.
Phillip Earl of *Mongommery* Lord Chamberlain of our Houſhould.
Theophilus Earl of *Suffolk*.
Edward Earl of *Dorcet*.
William Earl of *Saliſbury*.
Thomas Earl of *Exceter*.
John Earl of *Bridgwater*.
Fames Earl of *Carlile*.
Henry Earl of *Holland*.
William Earl of *D.*
George Earl of *Totnes*.
Sir *George Hay* Knight Lord Chaunceller of *Scotland*.
William Earl of *Morton*.
Thomas Earl of *Kelly*.
Thomas Earl of *Melros*.
Edward Viſcount *Conway* one of our principall Secritaries of State.
Edward Viſcount *Wimbleton*.
Oliver Viſcount *Grandiſon*.
Henry Viſcount *Falkland* Lord Deputy of *Ireland*.
To the Lord *Biſhop* of *Wincheſter*.
William Lord *Biſhop* of *Bath* and *Wells*.
Fulk Lord *Brook*.
Dudly Lord *Carleton* vice Camberlain of our Houſhould.
Sir *Thomas Edmonds* Treaſurer of our Houſhould.

Sir

Sir *John Savill* Comptroller of our Houſhould.
Sir *Robert Nawton* Maſter of our Court of Wards.
Sir *John Cooke* one of the principal Secritaries of our State.
Sir *Richard Weſton* Chancellor and under Treaſurer of our Exchequer.
Sir *Julius Cæſar* Maſter of the Roll.
Sir *Humfry May* Knight Chancellor of our Dutchy of *Lancaſter*; GREETING.

WHereas the preſent Conjuncture of the preſſing affairs of Chriſtendom and our own particular intereſt in giving aſſiſtance to our oppreſſed Allies, and for the providing for the defence and ſafety of our own dominions, And people do call upon us to neglect nothing that may conduce to thoſe good ends; And becauſe monies, the principall ſinews of War, and one of the firſt and chiefeſt in all great preparations and actions, neceſſary to be provided in the firſt place, and we are carefull the ſame may be raiſed by ſuch ways as may beſt ſtand with the State of our Kingdoms and Subjects, and yet may anſwer the preſſing occaſions of the preſent times. We therefore out of the experience we have had, and for the truſt we repoſe in your wiſdoms fidelities and dutifull care of your ſervices, and for the experience you have of all great cauſes concerning us and our State, both as they have relation to forraign parts abroad, and as to our Common-Wealth and People at home: Ye being Perſons called by us to be of our privy Councel, have thought fit amongſt thoſe great and important matters, which ſomuch concern us in the firſt and chiefeſt place, to recommend this to your ſpeciall care and dilligence, And we do hereby authorize and appoint, and ſtricktly will and require you ſpeedily and ſeriouſly to enter into conſideration of all the beſt and ſpeedieſt ways and means yee can for raiſing of money for the moſt important occaſions aforeſaid, which without extreameſt hazard to us, our dominions and people, and to our friends and Allies, can admit of no long delay, The ſame to be done by impoſition or otherwiſe, as in your wiſdom and beſt Judgments ye ſhall finde to be moſt convenient in a caſe of this inevitable neceſſity, wherein form and circumſtance muſt be diſpenſed with, rather then the ſubſtance be loſt or hazarded. And herein our will and pleaſure is, that you, or as many of you as from time to time can be ſpared from attendanc upon our Perſon, or other our neceſſary ſervices, do uſe all dilligence by your frequent meetings and ſerious conſultations, and when you have brought any thing to maturity, ye make report thereof unto us, and advertiſe us of thoſe things ye ſhall either reſolve upon or thinck fit to repreſent unto us, for the advancement of this great ſervice, which with the greateſt affection we can, we recommend to your beſt care and Iudgement, Whereof you muſt not fail as you tender our honour, and the honour and ſafety of our Dominions and People; and for the doing hereof, theſe preſents ſhall be to you and

every of you a ſufficient warrant. In witneſs whereof, we have cauſed theſe our Letters to be made Letters Patents.

Witnes our ſelfe at Weſtminſter *the laſt day of February in the third yeare of our* Raigne.

Per ipſum Regem.

Articles to be propounded to the Captains and Maſters as well Engliſh as French, touching the ſervice in hand at ROCHEL 4. May 1628. the ſhips rideing before the Town.

1. WHether in your opnion and judgments, by the means and ſtrength we have, the Floates and Pallizadoes may be forced, and the entrance into the Town may be thereby made for the victuallers.

2. If you ſhall think it fit, what in your opinions will be the beſt and readieſt way to open the ſame.

3. Whether you hold it fit to ſend in the victuallers at the ſame inſtant, together with the fire ſhips and barks, conſidering that if it ſhould not take effect, inſtead of relieving the Town, we relieve the Enemy.

4. If in this attempt part ſhall get through, and the greater part be taken by the Enemies, whether the ſervice or diſhonour will be greater.

5. If in caſe you think it fit to give the attempt, whether you hold it likewiſe neceſſary that the Merchant ſhips ſhould ſecond, or follow them, and how far you hold it ſafe for them to go.

6. Whether the more to countenance the ſervice, you hold it fit for the *Kings* ſhips, to put themſelves under ſail being they are to be expoſed to ſhallow water and a narrow Channel and to lye under command of many of the Enemies Forts, where, by an unlucky accident many of them may be brought on ground and miſcarry.

7. You are here to deliver your opinions upon your allegiance, the rather becauſe the onely ſervice the *Kings* ſhips there can do, is to cauſe the Enemies Fleet, which rides without, to retire further in, and whether it will be a means to weaken the Pallizadoes or any way open the paſſage to your judgments.

The

The anſwer to the Articles propounded by the Lord General and the reſt of the Councel of War.

1. TO the firſt, we anſwer that by reaſon of the ſhallowneſs of the water the ſhips will not be able to come ſo near as the Pallizados, whereby to make any breach through for the victuallers.

2. To the ſecond, we anſwer that nothing can be done by our forces here to gain any paſſage to the Town.

3. To the third, we anſwer that by reaſon our forces cannot come ſo near the Pallizadoes to make any breach, then it is not for the victuallers to venter in with their fire-ſhips; ſo no breach being made, the victualler will come into the Enemies hands.

4. To the fourth, we anſwer that the diſhonour will be greater if there be any loſs in that caſe.

5. To the fifth, we anſwer that in regard of their forces both by Sea and Land that no breach can be made as above ſaid, our opinion is, it will be to no purpoſe to ſend any ſhips in.

We hold it not fitting to bring his Majeſties ſhips, in regard they ſhall be expoſed to ſhallow water and danger of our Enemies Forts, upon the Land; which will be an hazard and loſs of his Majeſties ſhips.

To the ſeventh, and the concluſion mentioned in your Lordſhips Articles, we anſwer, that if we ſhould force the ſhips that lye without the Pallizado on the ground; It will rather make the Pallizado more ſtrong than any way to gain any paſſage through. If any man can ſhew any better reaſons than we here alleadge to thoſe Articles, we ſhall be ready and willing to imbrace it, and will endeavour our ſelves ſo far as our lives.

TRANSACTIONS
Of the second
SESSIONS
IN
PARLIAMENT,
ANNO 1628.

THus having finiſhed the firſt *Seſsion* of this *unhappy Parliament*, where the ſeeds were ſowen of thoſe diſcontents, which afterwards grew up, and lately have been reaped allmoſt to the ruine of our Nation;

Now followeth the *Breviary* or *abſtract* of the *ſecond Seſsion*, little different from the former in ſad ſucceſs: But we muſt confeſs that thoſe *two Tracts* (though joyned in one *volume* for the perfecting of the *Hiſtory*) are not the *Sons* of the ſame *Father*, proceed not from the *obſervations* and *collections* of the ſame *Authour*.

And as they differ in the Authour, ſo alſo in the faſhion and quantity thereof: the former Seſſion may be ſaid to be done at *length*, this *in figures*, the former had the *maine Maſs* and *Bulk*, this the *ſpirits* and *infuſions* of the paſſages therein.

Yet as a *low man* is as *much man*, though not ſo *great a man* as one of a *higher ſtature*, ſo may I ſay there is *as certain truth* in this as in the former relation though there be not ſo much of it. I mean it is as faithfully though not ſo fully reported. Indeed the *conſcientious Reader* being a true *Engliſhman* may here ſatisfie himſelf with the ſadneſs of the tranſactions as ſhortly ſummed up, who otherwiſe might ſurfet with ſorrow, if every particular were related in its full dimenſions.

Thus commending both this and the other to the carefull peruſing of the judicious Reader, I fear not his departing from this Book with an unſatisfied, who cometh thereunto with an unprejudiced judgment.

A true

A true

RELATION

Of every days proceedings ſince the beginning of this SESSION, and what was ſpoken by every man.

Tueſday January 20.

UPon *Tueſday* being the firſt day of the Parliament, nothing was done, but the ſetting of the Commitees.

Wenſday 21.

UPon this day it was ordered that Mr. *Selden* and others ſhould ſee if the Petition of Right and his Majeſties anſwer thereunto were inrolled in the Parliament Rolles; and the Courts at *Weſtminſter*, as his Majeſtie ſent them word the laſt Seſſion they ſhould be; and alſo in what manner they were entered, which was done accordingly: and Mr. *Selden* made report to the houſe, that his Majeſties ſpeech made the laſt day of the Seſſion in the upper Houſe, is alſo entered by his Majeſties command.

Mr. *Pym*,

HEreupon Mr. *Pym* moved that the debate hereof ſhould be deferred till *Tueſday* next, by reaſon of the fewneſs of the Houſe.

Sir *John Elliot*,

TO which Sir *John Elliot* anſwered, this, is now raiſed, concerns the honour of the Houſe and the liberty of the Kingdom, it is true; it deſerves to be deferred till there be a full Houſe, but it is good to prepare things. I finde it is a great point; I deſire a ſelect Committee may enter into conſideration thereof, and alſo how other liberties of the Kingdom be invaded. I finde in the country the Petition of Right Printed indeed, but with an anſwer that never gave any ſatisfaction: I deſire a Committee may conſider thereof, and preſent it to the Houſe, and that the Printer be ſent for to give

ſatisfaction to the Houſe, by what warrant it was printed. Which was ordered.

Mr. *Shelden*,

FOr this Petition of Right, It is known how lately it hath been violated, ſince our laſt meeting. The liberties for life, perſon, and free-hold, how they have been invaded; and have not ſome been committed contrary to that? Now we knowing theſe invaſions, muſt take notice of it. For liberties, for ſtate, we know of an order made in the *Exchequer*, that a Sheriff was commanded not to execute a replevim, and mens goods are taken and muſt not be reſtored, whereas no man ought to loſe life, or limb but by the Law, hath not one lately loſt his ears (meaning *Savage*) that was cenſured in the *Star-Chamber* by an arbitrary ſentence and judgement? Next they will take away our Arms, and then our lives. Let all ſee we are ſencible of theſe cuſtomes creeping upon us: let us make a juſt preſentation hereof to his Majeſty.

Norton the *King*'s Printer was brought to the Barr, and asked by what warrant the additions to the Petition were printed. He anſwered, that there was a warrant (as he thought) from the *King* himſelf. And being asked whether there were not ſome Copies printed without additions, he anſwered, there were ſome, but they were ſuppreſſed by ſome warrant.

Sir. *John Elliot*,

DEſired ſome clearer ſatisfaction might be made, and that he might anſwer directly by what warrant. Whereupon he was called in again: who ſaid, he did not remember the particular, but ſure he was there was a warrant.

Tueſday 22.

ONe Mr. *Roules* a Merchant, and a Member of the Houſe, informed the Houſe that his goods were ſeized by the Cuſtomers for refuſing to pay Cuſtome by them demanded, although he told them he would pay what was adjudged by Law. Whereupon, Sir *Robert Phillips* ſpake as followeth.

Sir *Robert Phillips*.

BY this information you ſee the unfortunateneſs of the times, and how full time it was that this Aſſembly ſhould meet to ſerve his Majeſty, and to preſerve our ſelves, and I am confident we come hither with fullneſs of both, and all ſhall conduce to a happy concluſion, and to the *King*'s honour and our own ſafety: Great and weighty things wound deep. Caſt your eyes which way you pleaſe, and you ſhall ſee violations on all ſides: look at the liberty of the ſubject, look on the priviledge of this Houſe, let any ſay if ever he ſaw the like

like violation by inferiour Miniſters, that over-do their command, nay they ſay, if all the Parliament were in you, this would we do and juſtifie. If we ſuffer the liberty of this Houſe to wither, out of fear, or complement, we give a wound to the happineſs of this Kingdom: Here the courſe of juſtice was interrupted, and order in the *Exchequer* was made for ſtay of the goods; ſince here is a ſeizure (upon the approach of Parliament) of goods amounting to 5000. *l.* for a pretended duty of 200 *l.* In the ſight of *King James*, by reaſon of the ſickneſs that then was, the Parliament was prorogued, and then there was ſome boldneſs to take this Tonnage and Poundage, for there was no right to demaund it. Let us proceed with affection of duty to make up breaches: let a Committee conſider of theſe proceedings.

Mr. *Littleton*,

HEre Mr. *Littleton* made a ſhort ſpeech to ſecond him, and all to the ſame purpoſe: but for brevity ſake I omit it.

M. *Littleton*, we have had good admonitions, and have followed them, we have moderation preached unto us in *Parliament*, and we follow, I would others did the like out of Parliament. Let the parties be ſent for that violated the liberties of the *Parliament*, and have their doom.

This Speech was occaſioned by Setretary *Cook*, who in his Speech deſired moderation might be uſed.

Sir *John Elliot*,

I See by this Relation what cauſe we have to be tender of the liberty of the Kingdom, and this Houſe, and yet withall to return that moderation, as to give ſatisfaction to the world, that our hearts are fixed to ſerve his Majeſty, and to free us from ofter of jealouſie, 3 Things are involved in this complaint.

Firſt, the Right of particular Gentlemen.

Secondly, the Right of the Subject.

Thirdly, the Right and priviledge of this Houſe. Let the Committee conſider of the 2 former, but for the violation of the liberty of this Houſe, let us not do leſs than our fathers. Was ever the information of a Member committed to a Committee? Let us ſend for the parties. Is there here a bare denial of the reſtiſtution of the goods? was it not alſo ſaid, that if all the Parliament were contained in him they would do as they did? Let them be ſent for. It was ordered that the Officers of the Cuſtome-houſe ſhould be ſent for.

Mr. *Selden*,

REported from the Committee concerning the printing of the Petition of Right, that there were printed 1500 without any addition at all, which were publiſhed in the time of the laſt Parliament: but ſince the Parliament other Copies have been printed, and

theſe ſuppreſt and made waſte paper, which the Printer did, as he ſaid, by command from Mr. *Attorny*, which he received from his Majeſty: and the Printer further ſaid, that the *Attorney* was with the Lord Privy Seal at *White-Hall*, and there delivered unto the Printer ſundry papers, with diverſe hands to them, and on the backſide was endorſed thus, We will & command you that theſe copies be printed.

Friday 23.

HIs Majeſty ſent the Houſe a Meſſage to this effect, That he willed them to ceaſe from the former debate of Tonnage and Poundage till the next day in the after-noone, and that he would ſpeak with them the next day in the after-noone at *White-Hall* in the Banqueting-houſe.

Saturday 24.

THe *King* made a Speech to that purpoſe.

Munday 26.

MR. *Walter* did inform the Houſe that diverſe ſhips were laden with corn for *Spain*, whereupon a Committee was appointed to inquire of the trading into *Spain*, and to other enemies, tranſporting corn, and other Munition thither: it is alſo ordered that ſome of the prime Councel ſhould preſently move the *King* about ſtay of the ſhips.

MR. Secretay *Cook* then moved that the Bill of Tonnage and Poundage might be read, and after ſome debate, it was diverted, and they fell upon points of Religion, the which Mr. *Rowſe* did firſt mention.

See his former Speech at large.

Sir *Francis Beamor*,

IF Religion be not a Rule to all our actions, what pollicy can we have? If God fight not our battailes the help of man is in vain? In our defect, the cauſe thereof is our defect in religion, and the ſin is Idolatry and Popery, Papiſts encreaſe now more than ever they did: neither do they want their Prieſts and Maſſes, nay his Majeſties name is uſed to ſtop proceedings againſt Papiſts, and that ſince the Parliament, contrary to his Majeſties goodneſs, and publick profeſſion, and contrary to his many proclamations, and many inſtructions to the Judges; and whatſoever is done in the country is undone above.

Mr. *Kirton*,

IF ever, now it is time to ſpeak, We ſee what men are raiſed to preferment; if we look not to it I ſhall more fear it than the *Spaniſh Armado*, or the loſs of the *Sound*. *Mountague* was here queſtioned

oned: We ſee the *King* to all our comforts is right, it comes not from him, but ſome that are too near him, are too buſie in this. The ambition of the Clergy brought theſe ſtories: We ſee pulpits are full of them, we ſee ſome that wear white and black 'tis more than *Mountague*; let us bend our wits to reforme them.

Mr. *Sherland.*

WE have a Religion that is worth the loving with all our hearts: it was ſetled by the bloud of Martyrs, and kept by miracles. To have our noſes wiped of this would grieve any heart; more, to ſee our Religion go away, and deſignes made of it, and Arminianiſm ſtill to encreaſe, as it doth. If do admi, I do perſwade my ſelf the greater part of the Clergy, Nobility, and Gentry, are firm, but it is the deſire of ſome to labour to bring in a new faction of their own, and ſo to drop into the ears of his Majeſty, that thoſe that oppoſe them oppoſe his Majeſty, and ſo they put him upon deſignes that ſtand not with publick liberty, that he commands what he liſts, with Lives, Goods, and Religion, and doth as he pleaſeth; and ſo they involve all true hearted *Engliſh*-men and Chriſtians under the name of Puritans, and ſo make their quarrel to be his Majeſties, which is treaſon of the higheſt quality.

Tueſday 27.

A Petition was exhibited concerning one *Lewis*, that ſaid about the 25 of *December*, *The Devill take the Parliament*, which was avowed by 2 witneſſes. It was reſolved to be an offence to the Parliament, and it was ordered he ſhould be ſent for.

SIr *Nathaniel Rich* tendered a Petition touching the Faſt, which was agreed to be preferred to the *King*. It 'was ordered that a conference ſhould be deſired with the Lords about this Petition, who were deſired to joyn with the lower Houſe: which was done accordingly.

THe *King* ſent a Meſſage by Secretary *Cooke* to this effect, *viz.* That his Majeſty underſtanding that the Remonſtrance was called for, to take away all queſtion, commanded me to deliver it to you: but hopeth that you proceed with the Bill of Tonnage and Poundage, and give precedence to that buſineſs, and to give an end to further diſpute between ſome of his Subjects, or elſe he ſhall think his Speech that was with a good applauſe accepted, had not that good effect which he expected. But before his Meſſege there was a report made by Mr. *Pym* for a Committee for Religion, where a motion was made about the Remonſtrance the laſt Seſſion, concerning that part which toucheth Religion: and the Clark anſwered, that by command from the *King* he delivered it to the Lord Privy Seal; and ſo the Committee proceeded no farther.

Sir

SIr *Walter Earl* replied to the Meſſage: The laſt part of the Meſſage calls me up. For point of precedency, Religion challengeth the precedence, and the right of our beſt endeavors. *Ubi dolor ibi digitus.* I know juſtice and liberty is Gods cauſe, but what will juſtice and liberty do when Popery and Arminianiſme joyn hand in hand together to bring in a *Spaniſh* Tyranny, under which thoſe Laws and liberties muſt ceaſe? What hath been done for Religion ſince the laſt Seſſion? We know what declarations have been made, what perſons have been advanced, what truthes confirmed by all Authority of Church, Councels, and *King*. For my part, I will forgo my life and eſtate and liberty, rather than my Religion. And I dare boldly affirm, that never was more corruption between Religion and matters of ſtate, than is at this preſent time. *Humana conſilia caſtigantur ubi cœleſtibus ſe præferunt.* Let us hold our ſelves to method; and that God that carried us through ſo many difficulties the laſt Parliament Seſſion, will not be wanting to us now.

Mr. *Corrington*,

LEt us not do Gods work negligently: We receive his Majeſties Meſſage withall duty; for our proceedings let us ſo proceed as it may ſooneſt conduce to his Majeſties deſire. Unity concerns all of us: the unity of this houſe is ſweet, eſpecially in Gods cauſe; let us cry and cry again for this let us be reſolved into a Committee, and preſently fall to debate thereof.

UPon Mr. *Pyms* motion. It was ordered that Religion ſhould have the precedency, and that the particulars before named ſhould be taken into conſideration by a Committee of the whole Houſe.

Wenſday 28.

Secretary COOKE delivered another Meſſage from his Majeſty.

HIs Majeſty upon occaſion of diſpute in this Houſe about Tonnage and Poundage, was pleaſed to make a gracious declaration, wherein he commended unto us the ſpeedy finiſhing thereof, and to give precedency thereto: and ſince his Majeſty underſtanding the preferring the Cauſe of Religion, his Majeſty expected rather thanks than a Remonſtrance, yet he doth not interrupt you, ſo you do not intrench upon that which doth not belong unto you; But his Majeſty ſtill commanded me to tell you that he expects precedency in Tonnage and Poundage, aſſuring himſelf he hath given no occaſion to put it back, and ſo you will not put it off.

To

To this Mr. *Long* replied,

I Cannot ſee but with much ſorrow, how we are ſtill preſſed to this point, I hoped thoſe near the Chair would have truly informed his Majeſty of our good intentions, but we ſee how unhappy we are ſtill, ſome about his Majeſty makes him diffident of us.

Sir *Thomas Edmonds*,

I am ſorry this Houſe hath given occaſion, of ſo many Meſſages about Tonnage and Poundage, after his Majeſty hath given us a full ſatisfaction. You may perceive his Majeſty is ſenſible of the neglect of his buſineſs; we that know this, ſhould not diſcharge our duties to you, if we ſhould not perſwade you to that courſe, which ſhould procure his Majeſties good opinion of you. Your ſelves are witneſſes how induſtrious his Majeſty was to procure you gracious Laws in his Fathers time, and ſince that what enlargement he hath made of our liberties, and yet ſtill we give him cauſe to repent him of the good he hath done. Conſider how dangerous it is to Alienate his Majeſties heart from Parliamens.

Mr. *Corington*,

When men ſpeak here of neglect of duty to his Majeſty, let them know we know no ſuch thing, nor what they mean, & I ſee not how we do neglect the ſame, I ſee it is all our hearts to expedite the Bill of Tonnage and Poundage in due time: our buſineſs is ſtill put back by theſe Meſſages, and the buſineſs in hand is of God and his Majeſty: Things are certainly amiſs, and every one ſees it, and wo be to us if we preſent them not to his Majeſty.

Sir *John Elliot*, His Speech to the ſame effect.

IT was ordered that a Committee ſhould be appointed, to pen an Anſwer to his Majeſties Meſſage, and ſhew that it is their reſolution to give him all expeditions in his ſervice, and that they hold it fit not onely to give him thanks, but further to ſhew what perill we are in, and that Tonnage is their own gift, and it is to ariſe from themſelves, and that they intend not to enter into any thing that belongs not unto themſelves.

Thurſday 29.

THe former part of the day was ſpent in dilating of the tranſportation of corn and victuals into *Spain*: and it was ordered that Meſſage ſhould be ſent to his Majeſty, that it is now evident that diverſe ſhips are bound for *Spain*; and to deſire a ſtay of them. After the Houſe ſat at a Committee about Religion, after long debate it was reſolved by the Commons-Houſe as before.

Friday 30.

THe Houſe received an anſwer from his Majeſty touching the Ships, which was, that he would conſider of it, and ſend them an anſwer in due time.

Alſo this day a Committee of the Lower-Houſe went to the *King* in the Privy-Chamber with the Petition for the Faſt; and the Arch-Biſhop of *York*, after he had made a ſhort Speech, preſented it to his Majeſty in the name of both Houſes. To which the *King* anſwered.

Munday Febr. 2.

THe Lower-Houſe preſented a declaration to his Majeſty in anſwer to two Meſſages ſent by him.

Tueſday 3.

SEcretary *Cook* reported, that himſelf and the reſt of the Committees attended his Majeſty upon *Munday*: and he ſaid, For my part I have uſed all diligence to do all the commands of my Maſter and this Houſe, and I find that ſome exceptions have been taken at ſome words by me uſed, when I delivered the Bill of Tonnage and Poundage, Indeed I uſed many Arguments in ſpeaking of his Majeſty, I ſaid it much concerned him, and that his Majeſty much deſired it, and I required it in his name; which I did not intend but to avoide diſpute: and I ſaid not this was an ordinary revenue, but this Tonnage was the means to inable his Majeſty to ſet his Fleet to ſea.

After this Apology, he read his Majeſties anſwer to the Petition of the Lower-Houſe.

Sir *John Elliot*,

MR. Speaker, I confeſs this hath given great ſatisfaction for preſent deſires and future hopes; and howſoever I find the miſinterpretation of ſome, and the danger of Religion; yet I find his Majeſties ears open, and if theſe things be thus as we ſee, that then he is not rightly counſelled. I am confident we ſhall render his Majeſty an account of what he expecteth: but Sir, I apprehend a difference between his Majeſties expreſſion, and the expreſſion of his Miniſters.

Firſt Sir, that Bill was here tendered in his Majeſties name, and now we find his Majeſty diſavows it, that he did it not. What wrong is this done to his Majeſty and to this Houſe, to preſs things in his Soveraigns name, to the prejudice and diſtraction of us all? I think him not worthy to ſit in this Houſe.

Mr.

Mr. *Speaker*,

THis Honorable perſon did explain himſelf, that he did not preſs it in his Majeſties name, but onely did commend it to your conſiderations.

Secretary *Cook*,

I Said, that in regard of the difference between his Majeſtie and his Subjects, my deſire was to accommodate it.

Sir *Humfrey May*,

IF ye be too quick to except againſt the miniſters of his Majeſtie, that ſerve his Majeſtie and this Houſe, it will discourage and ſtop our mouthes whoſe ſervice ye dayly commend.

At the Committee for Religion.

Sir. *John Elliot*,

FOr the way of our proceedings to ſhew the weight and unitie thereof to all the world, we have laid a good foundation. I collect out of the particulars about the Article of *Lambeth*, that the difference was in the manner of the uſe of them, but all did profeſs the truth and worth of them: at which unitie in all our hearts we may all rejoyce; whereas the enemie abroad gives out, that we are at faction amongſt our ſelves, whereas all of us took them granted not onely to make uſe of them to oppoſe our adverſaries, but alſo for the worth of them. Let us boldly relie on the ground alreadie laid, let us look to them that offended us in this our truth, which I hope we ſhall live and die in, if there be cauſe. Are there *Arminians?* (for ſo they are called) look to this, ſee what degree they creep, let us obſerve their Books and Sermons, let us ſtrike at them, and make our charge at them, and vindicate our truth that ſeems yet obſcure: and if any juſtifie themſelves in their new opinions, let us deal with them, and then teſtimonie will be needfull, our truth is clear, our proofs will be many, and if theſe parties will dare to defend themſelves, then ſeek for proof.

The Remonſtrance of the laſt Parliament was read, in part about *Arminians*, and alſo his Majeſties Declaration printed with the book of Articles, and the Proclamation againſt *Mountague*.

Wedneſday Febr. 4.

A Bill preferred that no Clergie-man ſhall be in Commiſſion for Peace, except Biſhops, Deans, Vice-Chancellors of both Univerſities, *&c.* within their ſeverall juriſdictions.

Doctor *Reeves*, which ſat as Judge upon the Conſervation of Mr. *Mountague*, called in and examined, ſaith, That Objections were offer-

ed *Ore tenus*, and after offered in writing, but he rejected the ſame, becauſe they had not an advocates hand; and upon the whole ſaith, he durſt neither admit of any objections for the preſent, nor give time for the ſame, upon pain of premunire by the Statute.

Doctor *Talbot* and Doctor *Steward* are aſſigned for Councel with Mr. *Jones* the Printer in his Cauſe.

Mr. *Selden*,

THe point conſiderable is not whether Doctor *Reeves* hath done well or ill, for he did but as any diſcreet man would have done, but the point is now whether Mr. *Mountague* be a lawfull Biſhop or no. Neither is the queſtion to be debated, whether the exceptions be lawfull or no, but being legal, of what force they be to hinder the confirmation of the Biſhop. All which is agreed, and Doctor *Reeves* for the preſent diſcharged.

A Petition is preferred by *Thomas Ogle* againſt Doctor *Coſens*, with Articles annexed thereunto, tending to the introducing of Popiſh Doctrine and Popiſh Ceremonies into the Cathedral Church at *Durham*.

Sir *Euball Thelwall*,

THere were two affidavits that *Coſens* ſhould ſay, That the King had no more to do with Religion than his Horſe-keeper; and that by the appointment of Mr. Attorney theſe affidavits were taken, and he ſaid, to the end a Bill in Star-chamber might be filed againſt him. But ſince *Coſens* hath his pardon; and the King was told it was onely raiſed by the ſpleen of ſome Puritane.

Mr. *Shervile*,

DEſired that ſearch might be made for the pardons; There were four pardons under the Great Seal granted to *Mountague*, *Sibthorpe*, *Coſens* and *Manwering*: it pardons all Treaſons, Premunires, Errors, erronious Opinions, and all falſe Doctrines, ſcandalous Speeches or Books, and all offences by word and deed, all corrupt contracts, *&c.* Treaſon to the perſon of the King, and Witchcraft onely excepted.

Mr. *Rouſſe*,

HEre are four perſons that have made the Common-wealth ſick; thus by the Phiſick you ſee the Diſeaſes: but I conceive there is other phyſick to be miniſtered to thoſe rotten Members, for queſtionleſs this is not to be cured but by cutting off thoſe Members.

Mr. *Kirton*,

MAſter *Kirton* moved, that the procurers of theſe Pardons might be enquired after, that it might be ſeen, who gave order

to

to the Signet for the going forth of thoſe Pardons; for queſtionleſs there are *Coſens* at Court too.

Sir *Robert Philips*,

IF ever any was abuſed, it was our King in granting thoſe pardons: we would ſave the time of doing any thing, if this be not ſearched to the bottom. The goodneſs of our King is much abuſed. I deſire the Attorney may give account by what Warrant he drew theſe pardons, ſo ſhall we find out thoſe that misled the King to the heart-grief of us all. It is high time to find out all theſe things.

A Committee was hereupon named, to enquire who have been the Solicitors and Procurers of theſe pardons.

Sir *Edward Giles*,

I Know not what prevention may happen in theſe, for queſtionleſs the devil of hell hath his hand in it: Therefore preſently let us ſend for Mr. Attorney. Which was Ordered.

Sir *James* Perotte,

SIr *James Perotte* complaineth further of ſome inſtruments of the Biſhop of *London*, and Doctor *Turner*, who denied the Licenſe of printing the Articles of *Ireland*: That diverſe books have been licenſed by the Biſhop of *Londons* Chapplains, and then refuſe the ſame, declaring they are of a contrary opinion, and have given licenſe to Mr. *Chomley* and Mr. *Butterfield*, and therefore would not give licenſe to theſe.

Mr. *Pym*,

MAſter *Pym* doth make a full Report of all the proceedings againſt Mr. *Mountague*, ſince the laſt Parliament of King *James*.

Sir *Robert* Phillips,

REported from Mr. Attorney, that my Lord of *Dorſet* ſpoke to him to haſten the Pardons, and that he received a Warrant from the King for drawing them; that my Lord *Carleton* brought another Warrant from the King for drawing theſe pardons, telling him, that he muſt make expedition therein, and he muſt draw the ſame as the Councel of the parties did direct the ſame. That Mr. Attorney having made a rough Draught, being often urged to expedition by the Biſhop of *Wincheſter*, he ſent the ſame to the Biſhop, who inter-lined and corrected the ſame, adding the names of *Coſens*, *Manwering*, and *Sibthorp* to the pardon.

That Mr. Attorney may be asked whether any of theſe Lords were made acquainted with the affidavit about *Coſens*. A Meſſenger is ſent to the Lord Keeper, to know the reaſon wherefore he made ſtop of the Great Seal, and by what ſolicitations he was preſt thereunto.

Thurſday 5.

A Petition in complaint of an inpoſition upon Mault, by the Citie of *London*, was this day preferred to the Houſe, which is preferred to the Committee for Grievances. Some differences being obſerved in the Articles, as in the twentieth Article, *&c.* a Committee is to Compare the old and new Articles with the Records at *Lambeth*, and conſider how all thoſe grievances come in.

Mr. *Long*,

COmplaineth, that a Proſecution hath been againſt him in the Star-chamber for ſitting in this Houſe the laſt Seſſion, he being High Sheriff of *Wiltſhire*, and choſen Burgeſs of *Bath* in *Somerſetſhire*.

The Preachers are to be choſen to morrow at the Committee for Religion.

Mr. *Ogle*,

IS called, who averreth his Petition, and will prove the ſame by witneſſes. It is Ordered, that *Coſens* ſhall have intimation to attend to anſwer here, if he will on Munday come fortnight, to be ſent for by a Serjeant at Arms, and if he be not of the Convocation, but if he be then to have notice by the Speakers letters, and if thereupon he appear not, then to proceed with him as is uſuall in like Caſes.

If Witneſſes be ſent for to this Houſe in any Publick buſineſs, they are to pay their own Charges.

Secretarie *Cook*,

SAith, He hath very now received from a Noble perſon this Meſſage from his Majeſtie, That he hath appointed the eighteenth of this Month for the faſt for this place, and the twentieth of the next Month for the whole kingdom.

Sir *Robert Phillips*,

MOveth in the behalf of the Lord *Peircie*, that having a Cauſe in diſpute in the Lords Houſe, and three Members of this Houſe being of his Counſel, deſires they may have leave to plead his Cauſe: Which being conceived to be a Cauſe that is not to receive any Judgement here, it is granted.

Friday.

A Petition exhibited againſt one *Wittington* a Papiſt in *Northumberland*, Ordered to be ſent for by a Serjeant at Arms.

Mr. *Harris* of St. *Margarets Weſtminſter*, Mr. *Harris* of *Hanwell* in *Oxfordſhire*, Mr. *William Fitz-Feoferies* of *Cornwall*, are choſen for three Preachers for the day of the Faſt, and for the precedence is referred to the Preachers themſelves.

Maſter

Mr. *Shervill*

REported, one Parſon *Scall* procured the Pardon for *Mountague*; one *Bartholomew Baldwin* ſolicited the Pardon for *Manwering*.

There is alſo another Pardon found to be granted to *Manwering*, pardoning the Judgement late he had given by the High Court of Parliament, and all ſums due to the King thereby.

Sir *Nathaniel Ritch*,

THat we may do ſomewhat which may give content to thoſe who ſent us hither, and make expedition to the buſineſs of his Majeſtie and the Common-wealth. That therefore the buſineſs of Mr. *Mountague* may be expedited to the Lords, that they may enter into theſe things as well as we.

The Councel of Mr. *Jones* the Printer are to be heard upon Munday next.

Sir *O. Roberts*

REporteth from the Committee ſent to Mr. Attorney, that Mr. Attorney ſtaid for the Affidavits taken by Sir *Euball Thelwall*. That one *Heath* a Gentleman of *Grays-Inne*, told Mr. Attorney, that *Coſens* ſhould ſay, that the King was not ſupream of the Church, and that he had no more to do with Religion, than he that rubs his horſe heels.

Mr. Attorney acquainted the King; whereupon the King charged him to make a ſtrict Inquiſition herein: but the King would not believe the ſame to be true. Mr. Attorney ſent for his Kinſman again, and being examined, he ſaid ſo as affidavits were made thereon.

There was further certificate from the Dean and others at *Durham*, ſo that the buſineſs was much leſſened thereby: but Mr. Attorney preſſing the buſineſs further, caſually met with the Biſhop of *Wincheſter*, who ſaid to Mr. Attorney, that this buſineſs will come to nothing, and *King*, that made the affidavit was but a vain fellow.

The Affidavit of *Thomas King* was read, which verifieth the ſame.

Mr. *Selden* made the reſt of this Report, and delivered the Warrant by which Mr. Attorney drew the Pardons for the Biſhop of *Wincheſter*. The effect was, that what Mr. *Mountague* had done or writ, was not out of any ill meaning; ſuch a Pardon ſhould be drawn as Mr. *Mountagues* Councel ſhould direct. This Warrant was under the Lord *Dorcheſter*, being the Lord *Carleton*.

Mr. *Selden* delivereth likewiſe the Copie of the Pardon interlined, and razed by the Lord Biſhop of *Wincheſter*.

Sir *John Elliot*.

HEre is high Treaſon upon oath, a Depoſition upon oath, an oppoſition is not in Law to be admitted; for here is not onely an Admiſſion

Admiſſion, but an Invitation of Certificates for defence, and allowed to ſway the caſe of ſo high a nature; that therefore the parties that made the Affidavits, and *Mr.* Attorney may be examined, to make a better diſquiſition in this, for I fear the intimation of the Biſhop of *Winchester* ſwayed too far with Mr. Attorney. Be matter true or falſe, the neglect of the dutie of the Attorney is not to be excuſed. I am much grieved to ſee his Majeſties mercie run ſo readily to theſe kind of perſons, and his juſtice ſo readily upon others, trifling occaſions, nay upon no occaſions, nay upon no occaſion, onely the misinformation of ſome Miniſter. Mr. Attorney being by Writ to attend the Lords Houſe, cannot be injoyned to attend this Houſe, or to appear upon Warrant: wherefore Mr. *Littleton* and Mr. *Selden*, being of the ſame Inne of Court, have undertaken to give notice to Mr. Attorney, that there being an accuſation here againſt him, he may here anſwer and ſatisfie the Houſe on Munday next.

Saturday.

A Bill againſt Spirituall Symonie, and a Bill againſt buying or ſelling of places of Judicature.

Mr. *Kirton* moved, That a time may be appointed to take into conſideration the buſineſs of Tonnage and Poundage.

Sir *Walter Earl* ſecondeth his motion, that all the world may know, that we will give to God that which is Gods, and to *Ceſar* that which is *Ceſars*, and to our Countrey that which is theirs.

Sir *Walter* moveth, That the Merchants may have their goods, and that his Majeſtie may be moved therein.

It is Ordered, That the Houſe on Tueſday next, in a Committee, ſhall take into conſideration the buſineſs of Tonnage, Poundage, and all things incident thereto.

Mr. *Shervill* is nominated to take the Chair of the Committee.

Sir *Rober Phillips*

REported from the Committee for Courſe of Juſtice: A Petition of Complaints was exhibited by Mr. *Noell*, a Member of this Houſe, againſt Sir *Ed. Moſeley* Attorney of the Dutchie Court, and his man, in point of injuſtice, That *Moſeley* covenanteth, that his man *Brograve* ſhould have 80 pounds, and then he ſhould have an Injunction; but the Chancellor having Intimation thereof prevented the ſame, yet after by Covenant, *Moſeley* procured his man 50 pounds; That this was an ordinarie courſe, cited many particulars, that *Moſeley* would in his private Chamber adde to Orders, or detract from them, or that was for the King, or againſt the King, as men would come off to him.

This is referred to a Committee to be examined.

Maſter

Mr. *Selden*,

REported from the examination of *Allen*, for ſo much as concerneth the Priviledge of this Houſe, by the firſt and third Article againſt him.

This juſtified by a Letter written by *Allen*, to Mr. *Barton*; the Puritan faction denied ſupply like Water-men provoked to War, rowed another way: for his Author of this, he produceth a book ſet forth by King *James*, in the 19 year of his Reign, *pag.* 13. to ſhew how the Puritan faction be clear, by mentioning the particular Members of the Commons Houſe, and *pag.* 5. & in the ſame *pag.* all which they cloke with Religion: and when he had boldly inſiſted on theſe, he ſaid, I pray note it; It is not this Parliament I ſpeak of, it was another.

Sir *Robert Phillips*,

THat he may be ſent to the Tower, and that he may ſtand in ſome publick place, with a Paper declaring the cauſe, or ſuch other puniſhment as the Houſe ſhall think fit.

Mr. *Pym*,

THat other matter of greater importance being under examination, he may for the preſent reſt in *cuſtodie*, and I doubt not but there is matter ſufficient to inflict further puniſhment.

Ordered that *Allen* ſhall firſt anſwer his contempt at the Committee for Religion, on Munday next.

Mr. *Shervile*,

THat the Committee for Pardons is *ſine die*, therefore he moveth for another day, whereupon there is order to meet this afternoon.

Mr. *Selden* reported the draught of Mr. *Mountagues* interlined Pardon, concerning the Additions more than an ordinarie Coronation Pardon, except ſundrie cauſes depending in the three Courts in *Weſtminſter*-hall, and the High Commiſſion Court.

For *Manwering*, all offences for time paſt, and for time to come.

Sir *John Stanhope*

MOveth, That one *Lynne* a Member of this Houſe, and Secretary to the Biſhop of *Wincheſter*, may look on the Pardon, and be injoyned to declare whether he know the hand or no.

Mr. *Lynne* declareth the interlined particulars, to be part his Lords hand, and part his own hand, by his Lords command; yet ſome of the interlined particulars he knew not the hand.

Sir *Nathaniel Ritch* thanked this Gentleman for dealing clearly with the Houſe, and ſaith, for his encouragement, he deſerveth thanks from the whole Houſe.

Sir *John Elliot* moveth, That a ſelect Committee may extract a

charge againſt the Biſhop of *Wincheſter*, that we may have judgement againſt him.

Sir *Daniel Norton*,

THat a Doctor of Divinitie, in the Biſhop of *Wincheſters* Dioceſs, a very grave Divine, Doctor *Moor*, the Biſhop of *Wincheſter* ſaid to him, he had heard him often preach againſt Poperie before the Kings Majeſtie, which was very pleaſing to the King; but now he muſt not. The Doctor anſwers, he muſt if it comes in his way: ſaid the Biſhop, you muſt not; and further, your Tables in the Quier ſtand as in an ale-houſe. The Doctor replied, they ſtood according to Law: ſayes the the Biſhop, there be Articles to the controove: ſaid the Doctor, the Regiſter found it contrary, ſaying, Your Tables at *Wincheſter* ſtood as Altars.

Sir *Robert Phillips*,

THus you ſee how truth in the diſcoverie doth grow upon us. And now you ſee how the introducing Ceremonies at *Durham* doth ariſe; and now you ſee the greateſt aſperſion laid on his Majeſtie that ever I heard of; and now I am confident the Biſhop of *Durham* procured the Kings hand to the Pardons.

Chancellor of the Dutchie,

THis trencheth high to the perſon of the King, and I am glad to hear it, and ſhall be more glad to ſee it proved.

Sir *Thomas Heale*

SAith, he heard theſe words from Doctor *Moores* own mouth: and asking if he would prove this in Parliament, he ſaid, he would maintain it with his life.

Mr. *Valentine*

SAith, That this Biſhop hath a Chaplain in *Grantham*, that preached they were all damned that refuſed the Loan, and that he hath made a great combuſtion in placing the Communion Table there.

The Speakers Letter is to go for Doctor *Moore*.

Munday 9.

A Petition in complaint of the Poſt-Maſters Patent of *London*, which is referred to a Committee.

Mr. Speaker delivered from Mr. Attorney, a Warrant in writing, of his proceedings in *Coſens* buſineſs.

Mr. *John Elliot* reported from the Committee for examination of the Merchants buſineſs, that the Committee finding Sheriff *Acton* in prevarications, and contradictions in his examinations, which is conceived

ceived to be a contempt of this Houſe, deſires he may be ſent for to anſwer his contempt.

Mr. *Godwin* ſaith, the Sheriff acknowledgeth his error, and humbly deſireth ſo much favour, that he may once again be called before the Committee, and if then he give not full contentment by his anſwer, he will refer himſelf to the wiſdome and juſtice of the Houſe.

Mr. *Walter* ſecondeth this Motion, ſo did Alderman *Molſon*, Secretarie *Cook*, Chancellor of the Dutchie, *&c.* but his abuſe being declared to be ſo great and ſo groſs, and that he had ſo many times given him to recollect himſelf, and that he being ſo great an Officer of ſo great a Citie, had had all the favour that might be, and yet rejected the ſame, and carried himſelf in a very ſcornfull manner; wherefore it is Ordered, that he ſhall be ſent for to the Houſe as a Delinquent to Morrow morning.

Jones the Printer and his Councel are called in to argue the buſineſs of Mr. *Mountagues* Epiſcopal Confirmation.

Firſt *Quere*, Whether the exceptions be Legal.

Secondly, whether the Confirmation be good? The laſt is the point now in hand, to which the Houſe enjoyned the Councel to ſpeak.

The Councel propoſed a Third *Quere*; What will be the fruit or effect of it, if in Law the Confirmation prove void? In this the Councel ſaid, it will not extend to make him a Biſhop upon the point of Election, but upon the point of Confirmation onely, which maketh him puniſhable if he execute any thing concerning the Biſhoprick.

Sir *Hen. Martin* ſaith, The exception making void the Confirmation, doth in Law work alſo upon the Election.

Doctor *Steward* ſaith, The point of ſetting to of the Advocates hand, is but matter of Form in the Court, no matter of Law.

Sir *Henry Martin* ſaith, he will endeavour himſelf to give the Houſe as full ſatisfaction, and he will ſpeak without relation to the Kings Right and Laws of the Realm.

The Proclamation by the Common Law ſhould not be at *Bow* Church, but at the Cathedral Church of the Dioceſs where the Biſhop is to be elected, and the Dean and Charter of that Dioceſs is to except, and not every one that will. The Argument is endleſs, and to alter a courſe ſo long ſettled, I conceive it is plain, the King and the Law have power to deprive him of his Biſhopprick if he deſerves the ſame; I think therefore it were good to decline this diſpute for the preſent, and to proceed to remove him which we are allowed.

Tuſeday 10.

A Bill for Ordering the Government and Plantation of the Summer Iſlands.

A Bill to reſtrain ſome abuſes in Miniſters and Magiſtrates.

Mr. *Rowles* complaineth, that ſince his laſt complaint of the

breach of the liberties of this Houſe, his Ware-houſe hath been locked up by one *Maſſey* a Purſevant, and that yeſterday he was called forth from the Committee in the Exchequer-chamber, and ſerved with a *Subpena* to appear in Star-chamber; but that ſince he received a Letter from Mr. Attorney, that it was a miſtake. The *Subpena* was read, but the Letter not ſuffered to be read.

Sir *Robert Phillips*,

YOu ſee we are made the Subject of ſcorn and contempt. I conceive this to be a bone thrown by thoſe that have drawn a cloud over our ſun, our Religion, to divert or interrupt us in the proſecution of them. I deſire the Meſſenger may be ſent for, and examined by what procurement this *Subpena* was taken forth: for if we find not out thoſe that throw theſe ſcorns upon us, it is in vain to ſit here.

Mr. *Chancellor* of the Dutchie,

THis proceeds from ſome great error; for I will aſſure you, this never proceeded from King nor Councel. I therefore deſire it may be ſearched to the bottom, for be confident, neither King nor Councel have caſt in this as a bone.

Mr. *Selden*,

THis is not to be reckoned an Error, for queſtionleſs this is to affront us, and our own Liberties is the cauſe of this.

It is Ordered, that *Shemington* the Meſſenger that ſerved the *Subpena* be preſently ſent for to the Houſe.

A Committee of ſix are appointed to ſee the information in Star-chamber, and to examin the ſame, and by whom the ſame was put in: and they have power to ſend for perſons, or records that may inform them.

A general Order agreed on, That all the Committees that have power to ſend for parties, ſhall have power to command any of them as they ſhall think fit, to attend the Houſe at ſuch times as they ſhall think fit.

The priviledge of the Merchants that are Planters here, may be taken into conſideration by this Committee, concerning the information in Star-chamber.

Sheriff *Acton* called into the Barre as a Delinquent, upon his knees ſaith, if he have erred, it is through want of memorie and ignorance; for he intended not the leaſt diſlike, or diſtaſte to any Member of the Houſe.

Mr. *Long* moved he might be ſent to the Tower.

Sir *Francis Seymour*,

THat he may now be referred back to the Committee to be re-examined, if then he deal not clearly, this Houſe may proceed to further puniſhment.

Mr.

Mr. *Selden*,

I Cannot remember when we did commit a Sheriff of *London*, but I remember when the Houſe did commit both the Sheriffs of *London* to the Tower, for an abuſe of leſs nature, onely for countenancing of a Serjeant in an Arreſt on a Member of Parliament, though they did acknowledge their faults at the Barre, which this man hath not yet done; the Serjeant was ſent to Little-eaſe, the perſon, at whoſe ſuit he was Arreſted, was committed to the *Fleet*, and both the Sheriffs to the Tower.

Mr. *Kirton*,

I Came into this Houſe with as good an heart to this man as any man, for I was ſpoken to to ſtand for him as I came in, and I promiſed to do what favour I could: but if he were my brother he ſhould to the Tower.

Mr. *Littleton*,

YOu ſee the affronts by books, by preaching, by rumors, by being dayly ſued, with Proces, that are put upon us, that we are become but a meer Scare-crow: the neglect of our dutie is the cauſe of this, it is high time to remedie this, or it is in vain to ſit here.

The Sheriff is again called in to the Barre on his knees, and is ſentenced to the Tower.

Sir *Ben. Ruddiard*,

THere be diverſe Recantations, Submiſſions, and Sentences remaining on Record, in both Univerſities againſt *Arminianiſme*, that concerning any thing that may conduce to our end, the Speakers Letter may be ſent to the Vicechancellor, for thoſe Records: which is Ordered.

It is Ordered, that *Worſnam Daws* and *Carmarthen*, are to be at the Barre upon Fryday.

Wedneſday 11.

MAſter *Selden* reported concerning the Proceſs of the Merchants, the Coppie of the Bill brought in and read, that the Merchants did Plot, Practice, and Combine together againſt the peace of the Kingdom. This being conceived to be a buſineſs incident to Tonnage and Poundage, is Ordered to be referred till to Morrow morning.

Mr. *Selden*,

THat a Report ſhall be made to morrow of the Examination of the Complaints of the Merchants, and the information in the Exchequer may alſo be brought; which was alſo Ordered.

Ordered, That in reſpect the Term ends to Morrow, and the Aſſizes is to follow, and diverſe Members Lawyers may be gone down,

it is Ordered, that none ſhall be gone without leave of the Houſe.

It is alſo Ordered, That the Speakers Letter be ſent for Sir *Edward Cook*.

At the Committee for Religion.

MAſter *Walter* delivered a Petition of the Book-ſellers and Printers, in complaint of the reſtraint of books written againſt Poperie and Arminianiſme, and the contrarie allowed of, by the onely means of the Biſhop of *London*; & that diverſe of them have been ſo Purſevanted for printing of Orthodox books, & that the licenſing of books, is now onely reſtrained to the Biſhop of *London* and his Chaplains.

One of the Printers ſaid he tendred diverſe books, one called, The golden Spur to the heavenly Race. That *Turner*, one of the Biſhop of *Londons* Chaplains ſaid, That if he would put out the point, That a man may be certain of his Salvation, he would licenſe the ſame: notwithſtanding he put out that point, yet he could not get the ſame licenſed.

Mr. *Selden*, The refuſing the Licenſing of books is no crime, but the Licenſing of bad books is a crime, or the refuſing to licenſe books, becauſe then writ againſt Poperie or Arminianiſme is a crime. There is no Law to prevent the printing of any book in *England*, onely a Decree in Star-chamber: therefore that a man ſhould be ſued and impriſoned, and his goods taken from him, is a great Invaſion on the Libertie of the Subject: moveth a Law to be made upon this.

This is referred to a ſelect Committee to examin.

Mr. *Shervile*,

REported concerning the Pardons, that they have examined Doctor *Sibthorp* and *Coſens* Pardons. *Sibthorp* ſolicited his own Pardon, and ſaid, he would get the Biſhop of *Wincheſter* to get the Kings hand to it.

It is evident, that the Biſhop of *Wincheſter* got the Kings hand to *Sibthorp* and *Coſens* Pardons, and alſo *Mountagues* Pardon was promiſed by him.

That Doctor *Manwering* ſolicited his own Pardon, and the Biſhop of *Wincheſter* got the Kings hand to it.

It is likewiſe ſaid, the Pardons were all drawn by Mr. Attorney before there was any Warrant.

Mr. *Cromwell* ſaith, he had by relation from one Doctor *Beard*, that *Beard* ſaid, Doctor *Allablaſter* had preached flat Poperie at *Pauls* Croſs; the Biſhop of *Wincheſter* commanded him, as he was his Dioceſan, that he ſhould preach nothing to the contrarie.

Sir *Robert Philips* ſaith, One Doctor *Marſhall* will relate as much ſaid to him by the Biſhop of *Wincheſter*, as the Biſhop ſaid to Doctor *Moor*.

Mr.

Mr. *Kirton*, That Doctor *Marſhall* and Doctor *Beard* may be ſent for. This Biſhop, though he hath leapt through many Biſhopricks, yet he hath left Poperie behind him.

That *Coſens* frequenting the Printing-houſe, hath cauſed the Book of Common-Prayer to be new printed, and hath changed the word Miniſter into Prieſt, and hath put out in another place the word Elect: thus *Coſens* and his Lord go hand in hand.

Sir *Miles Fleetwood* ſaith, We are to give *Mountague* his Charge, and by his books, charge him with Schiſme in error of Doctrine, Faction in point of State, Thirdly matter of Aggravation.

Sir *Walter Earl*,

Qui color albus erat, nunc eſt contrarius albo. ſaith, Doctor *White* hath ſold his Orthodox books, and bought Jeſuiticall books; & moves that Biſhop *White*, may go arm in arm with *Mountague*. Ordered a ſelect Committee to be named, to digeſt theſe things that have been alreadie agitated, concerning the Innovation of Religion, the Cauſe of the Innovation, and the Remedie.

Thurſday 12.

THe Sheriff of *London*, upon his ſubmiſſion at the Barre, is releaſed his impriſonment in the Tower.

Sir *John Elliot* made the Report for the Committee, in the examination of the complaint of Merchants, and delivered the Orders and Injunctions into the Exchequer.

At a great Committee for Tonnage and Poundage, Mr. SHERVIL in the Chair,

MAſter *Waller* delivered a Petition from *Chambers*, *Felke*, and *Gilborn*, in complaint of an information againſt them in the Star-chamber, about Tonnage and Poundage, & that by the reſtraint of their goods they are like to be undone.

Sir *John Elliot*,

THe Merchants are not onely kept from their goods by Cuſtomers, but by a pretended Juſtice in a Court of Juſtice, as the Exchequer. I conceive, if the Judges of that Court, had their underſtanding enlightened of their error by this Houſe, they would reform the ſame, and thereby the Merchants ſuddenly come to their goods.

Mr. *Tranſtort* conceiveth this to be a difficult way for us to go.

Mr. *Corington*, Let it be done which way the Houſe ſhall think fit, but I conceive the Merchants ſhall have their goods before we can think of the Bill. Kings ought not by the Law of God thus to oppreſs

oppreſs their Subjects. I know we have a good King, and this is the advice of his wicked Miniſters: but there is nothing can be more dishonorable unto him.

Mr. *Stroud*, That it may be Voted, That the Merchants may have their goods before we enter on the Bill.

Chancellor of the Dutchie, I ſhall ſpeak my opinion, becauſe I know not whether I ſhall have libertie to ſpeak, or you to hear any more. All the proceedings of the King and his Miniſters, was to keep the Queſtion ſafe untill this Houſe ſhould meet; and you ſhall find the proceedings of the Chequer were Legal; and thus much, not knowing whether I ſhall have a days libertie to ſpeak any more here again.

Mr. *Theſaurer*, There is none here but would think it a hard thing, that a Poſſeſſion ſhould be taken from us without any order for Sequeſtration, that therefore it was not to be ſuffered, that theſe few men ſhould ſo unjuſtly diſturb the Government of the State. Deſires there may be no interruption, but that we may proceed to ſettle the Tonnage.

Mr. *Corington*, I hope we may ſpeak here, as I hope we may ſpeak in heaven, and do our duties, and let no fear divert us.

Mr. *Waller*, It is not ſo few as 500 Merchants are threatened in this.

Sir *Robert Phillips* moveth, we may go to the King, and ſatisfie him of theſe interruptions.

Mr. *Noy*, We cannot ſafely give, unleſs we be in poſſeſſion, and proceedings in the Exchequer nullified, and information in the Starchamber, and the Annexion to the Petition of Right, and other Records. I will not give my voice to this, untill theſe things be made void; for it will not be a Guift, but a Confirmation. Neither will I give, unleſs theſe interruptions be removed, and a Declaration in the Bill, That the King hath no Right, but by our free guift.

If it will not be accepted as is fit for us to give it, we cannot help it. If it be the Kings alreadie, as by theſe new Records, then we need not to give it.

Mr. *Selden* ſecondeth the Motion of ſending a Meſſage to the Exchequer, declareth a Preſident of a Meſſage ſent into the Chancerie, for ſtay of proceedings in a Cauſe, and it was obtained; and whatſoever the Judges return it cannot prejudice us: the Law ſpeaks by Record, and if theſe Records remain, it will to poſteritie explain the Law.

Mr. *Littleton*, For the Right, there is no Lawyer ſo ignorant to conceive it, nor any Judge in the Land to affirm it is againſt giving to the King, or going on the Bill. In this caſe, by the Law, a man cannot be put to a Petition of Right, but ſhall recover without Right.

Ordered, that a Meſſage ſhall be ſent to the Court of the Exchequer, That whereas certain goods of the Merchants, have been ſtayed by Injunction from that Court, by a falſe Affidavit, and that the Cuſtomers

Cuſtomers that made the Affidavit, have upon examination of this Houſe confeſſed, that the goods were ſtayed onely for duties contained in the book of Rates, that therefore that Court would make void the orders and Affidavits in this buſineſs.

Friday 13.

A Petition againſt one *Burges* a Prieſt, who was here complained of the laſt Seſſion; ſome new Articles complained againſt him, that he could not get a Copie of his Articles out of the houſe, untill he was fain to get one counterfeit himſelf a Puritan to get the ſame, and other new miſdemeanors. He is Ordered to be ſent for.

Sir. *John Elliot*,

A Motion for Priviledge of Merchants. Order is, That any man having a Complaint depending here, in the mean time intimation ſhall be given to my Lord Keeper, That no Attachment ſhall go forth againſt the Merchants.

Chancellor of the Dutchie reported the Meſſage to the Chequer Court, that the Treaſurer and the Barons, will forthwith take the ſame into conſideration, and return anſwer.

It is Ordered, Mr. Secretarie *Cook* ſhall take care, that intimation ſhall be given to the Citie about the Faſt.

Doctor *More* called in, ſaith, he was referred to the Biſhop of *Winchester*, to be cenſured for preaching a Sermon; the Biſhop ſaid he had heard him preach, and deliver many prettie paſſages againſt the Papiſts, which pleaſed King *James*, but he muſt not do ſo now.

That you have a brother that preacheth againſt Bowing at the high Altar, or at the name of *Jeſus*; and that the Communion Tables ſtood as Tables in Ale-houſes; but he would have them to be ſet as High Altars.

Dr. *Moor* is to deliver theſe things in writing to Morrow morning.

At the Committee for Religion.

SIr *William Bawſtrod*, If we now ſpeak not, we may for ever hold our peace; when beſides the Queens Maſs, there are two other Maſſes dayly: ſo that it is grown ordinarie with the out-facing *Jeſuits*, and common in diſcourſe, Will you go to Maſs? or, have you been at Maſs at *Somerſet*-houſe? there coming 500 at a time from Maſs. Deſires to know by what authoritie the *Jeſuits* lately in *Newgate* were releaſed.

Mr. *Corington*, Doubts not but his Majeſties intention was good in the Declaration lately publiſhed, but I conceive it will be made uſe of onely to our diſadvantage; that therefore the Declaration made be taken into conſideration.

Sir *Richard Gravenor*

REports the proceedings of this Houſe againſt Poperie the laſt Seſſion, and what fruits have been thereon.

Sir *Rober Phillips*, If ever there were a neceſſitie of dealing plainly and freely, this is the time. There is an Admiſſion of Prieſts and *Feſuits*, as if it were in *Spain* or *France:* th s increaſe of Papiſts, is by connivance of perſons in Authoritie.

Nine hundred and fourtie perſons in houſes of Religion, being *Engliſh*, *Iriſh*, and *Scots* in the *Netherlands*, maintained by the Papiſts of *England*; and of this I ſhall deliver the particulars, that we may frame a Remonſtrance to the King, that unleſs there be ſome better performance of his Majeſties late anſwers to ſo many Petitions, our Religion will be paſt recoverie.

Mr. *Corington*, That the Papiſts, by Act of Parliament, or Laws of State, may be removed from their offices, which we have juſt cauſe to ſuſpect.

Mr. *Selden* moveth, that theſe things may be debated in order, and firſt for releaſing the *Feſuits* that were arraigned at *Newgate*, whereof one was condemned; they were 10 in number, which were Prieſts who had begun a Colledge here in *London*, about *Clarkenwell*: and theſe men could not attempt theſe acts of boldneſs, but they muſt have great countenancers.

Secretarie *Cook*,

THat a Miniſter (who is ſaid to be himſelf) having notice of theſe 10, and this Colledge intended to be kept at *Clarkenwell*. That it is plain there was a place appointed for this Colledge, and Orders and Relicts prepared.

This Miniſter made the King acquainted with it, and I ſhould not do my dutie, if I ſhould not declare how much his Majeſtie was affected with it. His Majeſtie refers it to the ſpecial care of the Lords of the Councell, who examining the ſame, ſent theſe ten perſons to *Newgate*, and gave order to Mr. Attorney, to proſecute the Law againſt them. That this Colledge was firſt at *Edmonton*, removed from thence to *Camerwell*, and thence to *Clerkenwell*.

Ordered, That all the Knights and Burgeſſes of the Houſe, ſhall, to Morrow morning declare their knowledge, what Letters or other hinderances have been for the ſtaying of proceedings againſt Recuſants.

Mr. *Long*, a Juſtice of Peace, who is ſaid to underſtand much in the buſineſs of the Colledge of *Feſuits* at *Clarkenwell*, is ſent for and examined; ſaith, by the appointment of Mr. Secretarie *Cook*, he apprehended theſe perſons, and took their Examinations; and ſaith further, he heard they were delivered out of *Newgate* by order from Mr. Attorney.

That Mr. *Middlemore*, or General Soliciter for the Papiſts, hired this

this houſe for the Lord of *Shrewsburie*, a Papiſt, and that there are diverſe books of account, of payments and diſburſments, to the value of 300 pounds *per Annum*, with diverſe Recuſants names, who allowed towards the maitenance of this Colledge; and theſe books and papers, are in the hand of Mr. Secretary *Cook*.

Secretarie *Cook* ſaith, he cannot ſo amply declare the truth of the proceedings herein, untill he have leave from his Majeſtie.

One *Croſs* a Purſevant, is to be examined upon oath: who declareth, he could diſcover diverſe ſtoppages of the execution of the Laws againſt Recuſants.

Saturday 14.

A Complaint againſt the Lord *Lambert*, a Baron of *Ireland*, and a Member of this Houſe; who being a Colonel of Souldiers in *Midd.* hath impoſed Four pence upon every Souldier towards his Officers Charges, and the Petitioner, for refuſing to pay, was firſt ſet in the Stocks, and after, by the Lord *Lambert*, committed to a Publick priſon.

It is Ordered, that the Lord *Lambert* ſhall be ſent for to anſwer this.

Sir *John Epſley* deſireth leave to anſwer a Complaint that is in the Lords houſe of Parliament againſt him.

Mr. *Selden*, That the uſe was, and citeth Preſidents, that no Commander could be called to the Lords Houſe, but it will trench much to the disadvantage of the Priviledge of this Houſe; and untill 18. *Jac.* there was never Preſident to the contrarie. That therefore this may be conſidered of by a ſelect Committee.

Ordered, that Sir *John Epſley* ſhall not have leave.

Mr. *Chancellor* of the Dutchie, ſtifly ſecondeth Mr. *Seldens* Motion.

Mr. Secretarie *Cook*, I am as carefull to maintain a good correſpondencie with the Lords, as any man; but connivances in this kind may overthrow the fundamental Rights and Liberties of this Houſe. Let it therefore ſeriouſly be conſidered of; for this not onely concerneth the Right of this Houſe, but the Libertie of the Common-wealth.

Ordered, a ſelect Committee ſhall be appointed to conſider this.

Mr. *Chancellor* of the Dutchie, delivereth an anſwer in writing from the Lord *Chancellor*, Trer. and Barons, to the Meſſage ſent to them.

Mr. *Kirton*,

WE looked for Satisfaction, but now you ſee a Juſtification of their actions. I therefore deſire now, we may proceed to conſider of their proceedings, and whether ever the Court of Exchequer held this courſe before, for ſtaying of Replevies; and whether theſe have been done by the Regal Prerogative of the King, in his Court of Exchequer.

It is Ordered, that a ſelect Committee of Lawyers, Chequer-men, ſhall take this into conſideration.

Mr. *Selden*, We have delayed the proceeding with the Cuſtomers, expecting ſome good ſucceſs from the Chequer, but finding it otherwiſe, I deſire the Cuſtomers may be called to the Barre on Munday next. Which is Ordered.

At the Committee for Religion.

Sir *Thomas Hobbie*, from the Committee reported for the examination of the Keeper and Clerk of *Newgate*, concerning the Prieſts, there being a Warrant under the Attorneys hand for the deliverie of the Perſons; a Warrant under the Lord Chief Juſtices hand, according to a Letter which he received from the Lord of *Dorſet*, ſignifying, that it was his Majeſties pleaſure, that the Prieſt condemned ſhould be reprived.

Another Warrant under the Attorneys hand, that the Prieſts condemned ſhould be reprived; and alſo in the Kings name to releaſe thoſe other nine perſons.

Sir *Nathaniel Ritch*, I am confident, the Grace of the King hath been abuſed in this; that therefore the privie Counſellers of this Houſe, may know whether it were his Majeſties direction.

It is moved, that Mr. Secretarie *Cook*, may firſt declare his knowledge in this.

One *Croſs*, gave intimation of theſe perſons.

Firſt the *Secretarie*, *Super totam maternam*, It is evident, that the Colledge at *Clarkenwell*, is a Colledge of *Jeſuits*, holden under a Forreign Supream power.

Sir *Francis Seymour* taxeth Mr. Attorneys affection and judgement in this, and alſo declareth continual Letters from Mr. Attorney in ſtay of proceedings againſt Recuſants. You ſee in this, how ſlightly Mr. Attorney hath put over a buſineſs of this weight to Mr. *Long*.

Croſs the Purſevant ſaith, there was an Eleventh man in the New Priſon, and the Keeper of that Priſon ſaid, he was delivered by Warrant from the Councel-board.

Sir *John Elliot*, No man could find a way on which to vent his malice ſo much to this Church and State, as by protecting theſe men. That this may be fixed home on that great Lord of *Dorſet*, that I fear hath defiled his fingers too far in this buſineſs; and on Mr. Attorney, whom I am ſorrie I have occaſion to nominate ſo often in this matter of Religion, in ſtopping of proceedings againſt Recuſants.

Mr. *Recorder* is ordered to be ſent for, and to be examined in this, rather than to be ſent for, having had the Honor formerly to ſit in the Chair.

Secretarie *Cook* ſaith, we ſhall find that the King, being mercifull in caſe of ſhedding bloud, gave direction for the repriving of thoſe Prieſts.

Sir. *John Elliot*, I doubt not when we ſhall declare the depth of this

this to his Majeſtie, but he will render them to judgement that gave him advice herein.

Sir *Nath. Ritch*, Theſe *Jeſuits* are bound by Sureties to anſwer further at the Councel-board. I wiſh theſe Bonds would produce theſe Men, that by examination of them, we may find out the whole pack of their Benefactors and Countenancers.

Mr. *Long* ſaith, that he offering at Seſſion the Evidence by order from M. Attorney, the Lord Chief Juſtice *Richardſon* interrupted him, and told him he muſt ſpeak to the point in iſſue, whether Prieſts or no Prieſts: and hereupon the Judges conſulted amongſt themſelves.

Mr. *Selden* ſaith, he was preſent at the Seſſions, and plain Treaſon was proved, and nothing done in it. The further examination of this is referred to a ſelect Committee.

Munday 16.

A Petition of Complaint againſt Sir *Henry Martin*, for diſpoſing of the goods of one *Brown* (who died inteſtate) to his own private uſe.

Sir *Henry Martin*, If I prove not my ſelf as clear of this as St. *John Baptiſt*, let me be reckoned to be a Jew.

Referred to the Committee for courſe of Juſtice.

At the Committee for Religion.

MAſter *Stroud*, That the Lord Chief Juſtice may be called to give an account of his ſtay of Juſtice, in the execution of the condemned Prieſts, which he ought not to have done, though his Majeſtie ſignified his pleaſure to the contrarie.

Chancellor of the Dutchie, That was a thing ordinarie for a Chief Juſtice to do in Queen *Eliſabeths* and King *James* times, as alſo a Declaration in the Star-chamber, that all condemned Prieſts ſhould be ſent to the Caſtle of *Wisbitch*; and from hence (though the King had given no order for the replevie) he might have taken his Warrant for his proceedings.

Mr. *Selden* reporteth from the Committee, for the further examination of Mr. *Long*, concerning the proceeding at *Newgate* againſt the *Jeſuits*; whereby plainly appeareth, that the evidence tendered in the Court at *Newgate*, did plainly teſtifie theſe men to be Prieſts, yet the Lord Chief Juſtice *Richardſon* did reject the ſame, againſt the ſence of the reſt of the Judges and Juſtices preſent: whereby it is plain he dealt under-hand to ſome of the *Jeſuites*.

Ordered, That two Members ſhall be ſent to each Judge that were preſent at the Seſſions at *Newgate*; who were ſaid to be the Lord Chief Juſtice of the *Kings Bench*, & the Chief Juſtice of the *Common-pleas*, Juſtice *Whitlock*, Juſtice *Jones*, and Juſtice *Crook*.

Tuſeday 17.

MAſter *Chambers* preferreth another Petition, in complaint of a Warrant newly proceeding from the Councel-board, for the ſtay of the Merchants goods, unleſs they payed the duties that were due in King *James* his time.

Sir *John Elliot*, You ſee, as by the laſt anſwer from the Exchequer, the Merchants were bounded within the Court to ſue for their own; ſo they are now debarred from all means of coming by their own.

It is Ordered, that the Cuſtomers ſhall attend the Houſe on Thurſeday next. In the mean time it is referred to the former Committee.

Ordered, a Committee of ſix to Collect and take all the names at the Faſt, and to meet at eight of the Clock in the Morning.

Ordered, That a Committee ſhall conſider of a ſpeedie way to put the Merchants in Poſſeſſion of their goods, without which it is warned we ſit here in vain.

Sir *Thomas Hobbie*, Reported from my Lord Chief Juſtice *Hide*, that he doth not remember any Papers tendred by Mr. *Long* were rejected, or that he affirmed they were dangerous perſons, and a Colledge of *Jeſuits*; but howſoever Mr. *Long* tendred nothing to prove them ſo, but that he had diverſe papers in his hand.

Mr. *Wansford* Reported from the Lord Chief Juſtice *Richardſon*, who ſaith, that Mr. *Long* did diſcourſe of the place and houſe, but did not preſs the reading of any papers, neither doth he know what was in the papers, neither knew he any thing to prove the perſons Prieſts.

Sir *Thomas Barrington* delivereth the anſwer of Juſtice *Jones*, who ſaith, the ſame papers were offered by Mr. *Long*, but he knoweth not the Contents thereof, nor the reaſon why they were refuſed: but he came late for want of his health, and the ſecond day was not there at all.

The like was Reported by Sir *Will. Conſtable*, from Juſtice *Crook*.

Sir *Thomas Barrington* ſaith, Although that Juſtice *Jones* did not write the name of my Lord Chief Juſtice *Richardſon*, yet in diſcourſe named him to be the man that ſaid, The point in proof is not whether they be Prieſts or no Prieſts.

Sir *Nath. Ritch*, Here is a charge of a high nature on the Judges by Mr. *Long*. That Mr. *Long* now may make good his Charge, or ſuffer for it: for there were witneſſes enough in the Court.

Ordered, Mr. *Long* to be here on Thurſeday Morning.

Ordered, That the Juſtices about this time, ſhall be required to deliver in the names of all Recuſants remaining about the Town, and their conditions, and what Countrey they be.

It is Moved, That the Gentlemen of the Inns of Court, and of the Chancerie, may give in their knowledge what Recuſants are there.

Sir

Sir *John Stanhope*, That the Court may give in the names of Recuſants there, likewiſe by what Warrant theſe be about the Town, and what publick charge of Office any of theſe perſons have, alſo what Prieſts and *Jeſuites* are in any priſon in *London*; for they have libertie ſometimes to go five miles to ſay Maſs.

Wedneſday 18.

A Publick Faſt was kept by this Houſe in *Weſtminſter*, where were three Sermons.

Thurſday 19.

MAſter *Dawes*, one of the Cuſtomers, called in to anſwer the point of Priviledge in taking Mr. *Rolles* his goods, being a Member of this Houſe, ſaith, he took Mr. *Rolles* goods by virtue of a Commiſſion under the great Seal, and other warrants remaining in the hands of Sir *John Elliot*. That he knew Mr. *Rolles* to be a Parliament man, and Mr. *Rolles* demanded his Priviledge; but he did underſtand his Priviledge to extend onely to his perſon, not to his goods.

Mr. *Dawes* further ſaith, he took thoſe goods for ſuch duties as were due in King *James* his time, and that the King ſent for him on Saturday laſt, and commanded him to make no other anſwer.

Mr. *Carmarthen*, another Cuſtomer called in, ſaith, he knew Mr. *Rolles* to be a Parliament man, and that he told Mr. *Rolles* he did not find any Parliament man exempted in their Commiſſion, and if all the bodie of this Houſe were in him, he would not deliver the goods (if he ſaid he ſaid he would not, it was becauſe he could not.)

Mr. *Wansforth*, That the delinquence of theſe men may be declined for the preſent, and that we may firſt go to the King by way of Remonſtrance; conſidering the matter from whence this did ariſe. If it were a ſingle Priviledge, it were eaſily determined.

Mr. *Selden*, If there be any near the King that miſpreſents our actions, let the curſe light on them, and not on us. And believe it, it is high time to right our ſelves, and untill we vindicate our ſelves in this, it will be in vain to ſit here.

Sir *Nathaniel Ritch* moveth, not to proceed in this, *untill* it be by a ſelect Committee conſidered, in regard, the King himſelf gave order to ſtay theſe goods, though the goods of a Parliament man.

Sir *John Eliot*, The heart-bloud of the Libertie of the Commonwealth, receiveth its life from the Priviledge of this Houſe.

Reſolved by queſtion, that this ſhall be preſently taken into conſideration. And being conceived a buſineſs of great conſequence, It is Ordered, That the Houſe ſhall be diſſolved into a Committee, for the more freedome of debate. Mr. *Harbert* in the Chair of that Committee.

Fryday

Friday 20.

A Petition of Complaint of a Conſpiracie againſt a mans life, by the Lord Deputie of *Ireland*, and others, to get the eſtate of the Petitioner to their own uſe.

Which is referred to the Committee for Juſtice.

Sir *John Worſnam*, another of the Cuſtomers called in, ſaith, he was commanded from the King: that the goods were taken for duties; and no more: that he was ſought to to Farm the Cuſtoms, and told the King, (being ſent for to him) that he was not willing to deal therein, untill the Parliament had granted the ſame.

Mr. *Selden* Conceiveth the caſe of theſe three Cuſtomers do differ in the degrees of their offences. Firſt for Sir *John Worſnam*, whatever he ſaith here, he hath often confeſſed the goods were taken for Tonnage and Poundage: ſo that as he broke the Priviledge in taking the goods, ſo likewiſe his ſwearing one thing and the contrarie, plainly appeareth upon proof, and his own confeſſion.

Mr. *Dawes*, his cauſe differeth onely in this, Sir *John Worſnam* is a Patentee, and *Dawes* onely a ſharer.

Mr. *Carmarthens* cauſe differeth, in ſaying, if all the Parliament were in him, he would not deliver his goods.

Ordered, that *Worſnams* caſe ſhall be firſt decided.

And firſt the point is, Whether by the Leaſe Sir *John Worſnam* having ſeiſed the goods, hath intereſt or no; or whether he be onely an accounter to the King, or not.

Mr. *Glanvile*, Here is a ſum of money advanced, a Leaſe granted for certain years, a certain Rent reſerved: and though there be a covenant to theſe men, that if there be leſs it ſhall be abated, yet that cannot take away their intereſt.

The ſubſtance of the offences made by the Cuſtomers in the Exchequer is, that the goods of the Merchants ſeiſed by them, and remaining in the Kings Store-houſe, were ſeiſed onely for duties to the King, mentioned in a Commiſſion under the Kings ſignet; and that themſelves (the Cuſtomers) had no intereſt, nor pretence of intereſt.

Saturday 21.

A Petition by Mr. *Thomas Symons*, in further complaint of the Cuſtomers, and the Two ſhillings Six pence upon the Currants granted to the Lord *Arrundell:* which is referred to the Committee for Merchants.

Sir *Robert Pye* ſaith, The Lord of *Arrundell* hath delivered in his Patent to the King two months ſince.

At the Committee for Merchants.

MAſter *Littleton* argued, whether a Member of the Houſe hath his goods priviledged upon a Prorogation, being ſeiſed for the King.

All

All Priviledge is allowed for the good of the Common-wealth, and the Parliament Priviledge is above any other, & the Parliament onely can decide Priviledge of Parliament, not any other Judge or Court whatſoever.

That a man may not diſtrain for *rem* in Parliament time, but for all arrears after the Parliament he may diſtrain: he is not to be imployed in any action perſonal, nor his goods to be ſeiſed in the Exchequer. A Record and Act of Parliament by Petition, that becauſe the ſervant of a Member of the Parliament is in the Kings Royal protection, that it might be High Treaſon to kill a Parliament man: and the King anſwered affirmatively; which made it a Law.

And for the Judges to determin priviledge of Parliament, were to ſuperſede the Law, and make it void. For the Prorogation the Priviledge ſtands good untill the day of Prorogation, notwithſtanding a Proclamation of a new Prorogation.

That the King is never ſo high in point of State as in the Parliament. Citeth the caſe of Sir *Robert Howard* in High Commiſſion.

All Priviledges unleſs in Felonie, Treaſon, or breach of Peace.

Sir *Robert Phillips*, Thus you ſee how faſt the Prerogative of the King doth trench on the Libertie of the Subject, and how hardly recovered. Citeth many Preſidents, wherein the goods of a Member of the Parliament were Priviledged from ſeizure in the Exchequer. In 19 *Eliz.* it was reſolved in Parliament, that 20 days before, and 20 days after was the time of Priviledge.

Chancellor of the Dutchie, That in this debate we may tie our ſelves to point of Law and Authoritie, not to point of Reaſon.

And conceiveth that no Priviledge lieth againſt the King in point of his duties.

Sir *Francis Seymour*, I deſire it may firſt be debated, Whether this caſe doth concern the King or no: for I conceive theſe Cuſtomers have not made good that there was any right: here is onely art uſed to entitle the King. I conceive it a high offence for any man to lay the ſcandal upon the King for every project.

Mr. *Glanveil*, Here is a cunning Project in the Exchequer to entitle the King, a meer cunning Project, and an offence of a high nature, to ſhelter their projects under the Command of the Crown.

Secretarie *Cook*, The point in queſtion is not the right of the Subject, but the right of Parliament Priviledge, and that in the caſe of Mr. *Rolles*; and this is onely now in queſtion.

Sir *John Strangewaies*, I know no reaſon why we ſhould draw a queſtion upon our ſelves which we need not, eſpecially between the King and us. I conceive it plain, theſe Cuſtomers took the goods in their own right, not in the Kings. In this Priviledge is plainly broken, wherein it is eaſily determined.

Mr. *Banks*, In this caſe there is no interpoſing of the Kings Right, and the King, this Parliament hath declared as much.

That the Courts at *Weſtminſter* do grant 12 days priviledge to any man to inform his Councel, much more the Court of Parliament are to have their Priviledge. The Kings Command cannot extend to authorize any man to break the Priviledges, no more than it will warrant an entrie upon any mans Land without proceſs of Law.

Mr. *Soliciter*, If the King have no Right, how can he make a Leaſe? then this pretended intereſt of the Cuſtomers muſt needs be void, and therefore the goods muſt not be taken on their own right, but in the right of the King.

Mr. *Selden*, If there were any right, the pretended right were in the Subject. Firſt, whether Priviledge in goods. Secondly, whether the right were in the Cuſtomers onely. Thirdly, whether priviledge againſt the King.

1. If the Lords have no priviledge in Parliaments for their goods, then have they no priviledge at all; for they are priviledged in their perſons out of Parliament.

2. For the point of intereſt it is plain, no kind of Covenant can alter the intereſt; and queſtionleſs, had the cauſe in the Exchequer appeared to the Barons as it doth to us, they would never have proceeded as they did.

3. If our goods may be ſeized into the Exchequer, be it right or wrong, we were then as good have nothing.

Sir *Nath. Ritch*, It was recorded the laſt Seſſion (and citeth other preſidents in this Houſe) that a ſervant of a Member in Parliament ought to have priviledge in his goods.

Mr. *Noy* ſaith, that theſe Commiſſioners had neither Commiſſion nor Command to ſeize. Therefore without doubt we may proceed ſafely to the other queſtion, That the priviledge is broken by the Cuſtomers, without relation to any Commiſſion or Command of the King.

Secretarie *Cook* ſaith, It is in the Commiſſion to ſeize, but the Commiſſion being read, it is not found to be there.

Chancellor of the *Dutchie* ſaith, Mr. *Dawes* mentioned, that he ſeized theſe goods by virtue of a Commiſſion and other Warrants remaining in the hands of Sir *John Elliot*: that therefore theſe Warrants may be ſeen, whether there be no command to ſeize theſe goods.

Sir *Nathaniel Ritch*, This days debate much joyeth me, ſpecially the motion made by Mr. *Noy*, whereby it is plain we have a way open to go to this queſtion, without relation to the Kings Commiſſion or Command: and deſire it, in reſpect there appears nothing before us to incumber the queſtion.

Chancellor of the *Dutchie*, deſires again theſe Warrants may be lookt into before we go to the queſtion.

Mr. *Kirton*, In reſpect this Honorable Gentleman preſſeth this ſo far, that it may appear with what judgement this Houſe hath proceeded.

Mr.

Mr. *Glanveil*, I conſent theſe Warrants be ſent for and read, but withall, if any thing ariſe that may produce any thing of ill conſequence, let it be conſidered from whence it doth come.

The Privie Councellers are contented with this Motion.

The Warrants being ſent for and read, it is plain there is no Warrant to ſeize.

Mr. *Kirton*, If now there be any thing of doubt, I deſire thoſe Honorable perſons may make their objections.

Chancellor of the *Dutchie*, I rejoyce when I can go to the Court able to juſtifie your proceedings.

I confeſs, I ſee nothing now but that we may ſafely proceed to the Queſtion.

Mr. Secretarie *Cook* ſaith as much.

Mr. *Hackwell* argueth againſt Priviledge in time of Prorogation.

Mr. *Noy* ſaith, he had no doubt, but that Priviledge was in force in time of Prorogation, untill he heard this Argument of Prorogation of Mr. *Hackwell*, and ſaith, that he hath nothing from him yet that doth alter his opinion; and citeth a cauſe wherein the Lords Houſe hath this verie Prorogation adjudged the Priviledge.

Mr. *Hackwell* ſaith, he is glad to hear it is ſo, and he is now of the ſame opinion.

Decided by Queſtion, That Mr. *Rolles* ought to have Priviledge of Parliament, for his goods ſeiſed 30 *Octob.* 5 *Jac.* and all ſithence.

This Committee is adjourned untill Munday, and the Cuſtomers to attend.

The Proteſtation of the COMMONS in Parliament on Munday 2. Mar. 1628.

1. *WHoſoever ſhall bring in an Innovation in Religion, or by favour or countenance ſeek to extend, or introduce Poperie or Arminianiſme, or other Opinion differing from the true and orthodox profeſſion of our Church, ſhall be reputed a Capital enemie to this Kingdom and Common-wealth.*

2. *Whoſoever ſhall counſel or adviſe the taking or leavying of the Subſedies of Tonage and Poundage, not being granted by Parliament, or ſhall be an Actor or an Inſtrument therein, ſhall likewiſe be reputed an Innovator in the Government, and a Capital enemie to the Kingdom and Common-wealth.*

3. *If any Merchant, or other perſon whatſoever, ſhall voluntarily yield or pay the ſaid Subſedie of Tonnage or Poundage, not being granted by Parliament, he ſhall likewiſe be reputed a Betrayer of the Liberties of* England, *and an enemie to the ſame.*

THE

KINGS SPEECH

in the Houſe of PARLIAMENT, Mar. 10. 1628. to Diſſolve it.

My LORDS,

I Never came here upon ſo unpleaſing occaſion, it being for the Diſſolving of a PARLIAMENT; therefore many may wonder why I did not rather chooſe to do this by my Commiſſion; it being the general Maxim of Kings, to lay harſh commands by their Miniſters, themſelves onely executing pleaſing things. But conſidering that Juſtice is as well in Commanding of Virtue, as Puniſhing of Vice, I thought it neceſſarie to come here to day, to declare to you, my Lords, and all the world, That it was onely the disobedient carriage of the Lower Houſe that hath cauſed this Diſſolution at this time; and that you, My Lords, are ſo far from being cauſers of it, that I have as much comfort in your Obedience, manifeſted by all your carriage towards me, as I have cauſe to diſtaſte their proceedings. Yet that I may be clearly underſtood, I muſt needs ſay they do miſtake me wondrouſly that think I lay this fault equally on all the Lower Houſe; for I know there are many there, as dutifull Loyal Subjects as any are in the world: I know that it was onely ſome Vi

pers

pers among them, that did caſt this miſt of disobedience before their eyes; although there were ſome there that could not be infected with this Contagion; inſomuch that ſome by their ſpeaking (which indeed was the general fault on the laſt day of the Houſe) did ſhew their obedience. To conclude, my Lords, as thoſe ill-affected perſons muſt look for their reward, ſo you that are here of the Higher Houſe, may juſtly claim from me that protection and favour, that a good King bears to his Loyal and Faithfull Subjects and Nobilitie. Now my Lords, execute that which I Command you.

Lord KEEPER,

MY Lords and Gentlemen of the Houſe of Commons, the KINGS Majeſtie doth Diſſolve this *Parliament*; wherefore you have all free leave to depart to your Reſidences, *&c.*

His MAIESTIES Letter, with Queres concerning Ship-money, and the Anſwer thereunto.

To Our truſtie and welbeloved, Sir *John Bramſton* Knight, Chief Juſtices of our *Bench*; Sir *John Finch* Knight, Chief Juſtice of our Court of *Common-pleas*; Sir *Humphrey Davenport* Knight, Chief Baron of Our Court of *Exchequer*; and to the reſt of the Judges of Our Courts of *Kings Bench*, *Common-pleas*, and the Barons of our Court of *Exchequer*.

CHARLES R.

TRuſtie and welbeloved We greet you well. *Taking into Our Princely conſideration, that the Honor and Safetie of this our Realm of* England, *the preſervation whereof is onely intruſted to Our care, was, and is now more dearly concerned than in late former times, as well by diverſe Counſels and attempts, to take from Us the Dominion of the Seas, of which We are ſole Lord and rightfull Owner, or Propriator, and the loſs whereof would be of greateſt danger and peril to this Kingdom, and other our Dominions, and many other wayes; We, for the avoiding of theſe and the like dangers, well weighing with Our ſelf, that where the good and ſafety of the Kingdom in general is concerned, and the whole Kingdom in danger, there the charge and defence ought to be born by all the Realm in general; did for preventing ſo publick a miſchief, reſolve with Our ſelf, to have a Royal Navie provided, that might be of force and power (with Almightie Gods bleſsing and aſsiſtance) to protect and defend this our Realm, and our Subjects therein, from all ſuch perils and dangers: and for that purpoſe We iſſued forth Writs under Our Great Seal of* England, *directed to all Our Sheriffs of Our ſeveral Counties of* England *and* Wales, *Commanding thereby all Our ſaid Subjects in every Citie, Town and Village, to provide ſuch a number of Ships, well furniſhed as might ſerve for this Royal purpoſe, and which might be done with the greateſt equallitie that could be. In performance whereof, though generally throughout all the Counties of this Our Realm, We have found in Our Subjects great chearfulneſs and alacritie, which We graciouſly interpret as a teſtimonie as well of their dutifull affections to Us and Our ſervice, as of the reſpect they have to the publick, which well becometh every good Subject; nevertheleſs, finding that ſome few, happily out of ignorance what the Laws and Cuſtoms of this Realm are, or out of a deſire to be eaſed and freed in their particulars, how general ſoever the charge be, or ought to be, have not yet paid and contributed the ſeveral Rates and Aſſeſments that were ſet upon them; & foreſeeing in our Princely wiſdom, that from hence diverſe Suits and Actions are not unlikely to be commenced, and proſecuted in Our ſeveral Courts at* Weſtminſter; *We, deſireous to avoid ſuch inconveniences, and out of Our Princely love and affection to all our people, being willing to prevent ſuch errors as any of Our loving*

loving Subjects may happen to run into, have thought fit in a Case of this nature, to advise with you Our Judges, who we doubt not are all well studied and informed in the rights of Our Sovereigntie. And because the Trials in Our several Courts, by the formalities in pleading, will require a long protraction, We have thought fit by this Letter directed to you all, to require your Judgements in the Case, as it is set down in the inclosed Paper, which will not onely gain time, but also be of more Authoritie to over-rule any prejudicate opinions of others in the point. Given under Our Signet at Our Court of White-hall, *the Second day of* Febr. *in the Twelfth Year of our Reign.* 1636.

CHARLES R.

WHen the good and safetie of the Kingdom in general is concerned, and the whole Kingdom in danger, Whether may not the KING, by Writ under the Great Seal of *England*, Command all the Subjects of this Kingdom, at their charge, to provide and furnish such number of Ships, with Men, Victuals, and Munition, and for such time as he shall think fit, for the defence and safeguard of the Kingdom from such danger and peril, and by Law compel the doing thereof, in case of refusal or refractorines?

And whether, in such case, is not the KING the sole Judge both of the danger, and when and how the same is to be prevented and avoided?

CHARLES REX.

Answer.

MAy it please Your most excellent Majestie, We have, according to Your Majesties Command severally, every man by himself, and all of us together, taken into serious consideration the Case, and Questions, signed by your Majestie, and inclosed in your Royal Letter: and we are of opinion, that when the good and safetie of the Kingdom in general is concerned, and the whole Kingdom in danger, Your Majestie may, by Writ under the Great Seal of England, *Command all the Subjects of this Your Kingdom, at their charge, to provide and furnish such number of Ships, with Men, Victual, and Munition, and for such time as Your Majestie shall think fit, for the defence and safeguard of the Kingdom from such danger and peril: and that by Law Your Majestie may compel the doing thereof, in Case of refusal or refractorines. And we are also of opinion, That in such Case Your Majestie is the sole Judge, both of the danger, and when and how the same is to be prevented and avoided.*

John Bramston.	John Denham.	George Crook.	Robert Barkley.
John Finch.	Richard Hutton.	Thomas Trevor.	Francis Crawley.
Humfrey Davenport.	William Jones.	George Vernon	Richard Weston.

FINIS.